THE

Justice of the Peace,

AND

PARISH OFFICER.

By RICHARD BURN, LL.D.

LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

THE TWENTY-FOURTH EDITION:
With CORRECTIONS, ADDITIONS, and IMPROVEMENTS.
The CASES brought down to the End of Trinity Term,
5 GEO. IV. 1824.
And the STATUTES to the End of 5 GEO. IV. 1824.

BY SIR GEORGE CHETWYND, BART. M.P.
BARRISTER AT LAW,
AND CHAIRMAN OF THE GENERAL QUARTER SESSIONS OF THE PEACE
FOR THE COUNTY OF STAFFORD.

Dr. Burn has great merit: He has done great service, and deserves great commendation.—*Per* Lord MANSFIELD C. J. Burr. S. C. 548.

IN FIVE VOLUMES.

VOL. III.

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1825.

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TABLE

OF THE

NAMES OF CASES

IN THIS VOLUME.

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TABLE OF STATUTES

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Inclosures.

[Stats. 41 *G.* 3. (*U. K.*) *c.* 109. — 1 & 2 *G.* 4. *c.* 23.]

BY stat. 41 *G.* 3. (*U. K.*) *c.* 109. § 1. after reciting, that in order to diminish the expense attending the passing of acts of inclosure, it is expedient that certain clauses usually contained in such acts should be comprised in one law, and certain regulations adopted for facilitating the mode of proving the several facts usually required by parliament on the passing of such acts, *it is enacted*, that no person shall be capable of acting as a commissioner in the execution of any of the powers to be given by any act hereafter to be passed for dividing, allotting, or inclosing any lands or grounds, except the power of signing and giving notice of the first meeting of the commissioner or commissioners for executing any such act, and of administering the oath or affirmation hereinafter directed, until he shall have taken and subscribed the oath or affirmation following:

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No person to act as a commissioner under any future act of inclosure, except signing notice of first meeting and administering an oath, until he shall have taken the oath herein mentioned.

I *A. B.* do swear, [*or*, being one of the people called *Quakers*, do solemnly affirm,] that I will faithfully, impartially, and honestly, according to the best of my skill and ability execute and perform the several trusts, powers, and authorities vested and reposed in me as a commissioner, by virtue of an act [*here insert the title of the act*], according to equity and good conscience, and without favour or affection, prejudice or partiality, to any person or persons whomsoever. So help me GOD.

Which oath or affirmation any one of the commissioners, where more than one shall be appointed by any such act, or any one justice for the county within which the said lands or grounds shall be situated where only one commissioner shall be so appointed, shall administer; the said oath or affirmation, so to be taken and subscribed by each commissioner, and also the appointment of every new commissioner, shall be annexed to and inrolled with the award of any commissioner or commissioners, and a copy of the inrolment thereof shall be admitted as legal evidence.

Oaths and appointment of new commissioners, to be inrolled with the award, and a copy admitted as evidence.

§ 2. And every person appointed a commissioner in or by virtue of any such act, who shall refuse or decline to act, shall forthwith

Commissioners declining to act,

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give notice in writing to the other commissioner or commissioners of his intention to refuse or decline acting as a commissioner (*a*): Provided always that no such commissioner shall be capable of being a purchaser of any part or parts of the lands, tenements, or hereditaments within any parish in which the lands or grounds intended to be inclosed are situate, either in his own name, or in that of any person or persons, until five years after the date and execution of the award to be made by any such commissioner or commissioners.

[to] give notice of [su]ch intention [t]o the other [c]ommissioners; [an]d none to [pu]rchase lands [w]ithin any pa[r]ish in which [t]he inclosures [a]re to be made, for a limited time.

Commissioners to inquire into the boundaries of parishes, and if not sufficiently ascertained, fix them, giving notice of their intention so to do.

§ 3. And whereas disputes or doubts may arise concerning the boundaries of parishes, manors, hamlets, or districts to be divided and inclosed, and of parishes, manors, hamlets, or districts adjoining thereto; the commissioner or commissioners appointed by virtue of any such act shall and is and are hereby authorized and required, by examination of witnesses upon oath or affirmation (which any one of such commissioners is empowered to administer,) and by such other legal means as he or they shall think proper, to enquire into the boundaries of such several parishes, &c.; and if it appear that the boundaries of the same respectively are not then sufficiently ascertained and distinguished, such commissioner or commissioners shall ascertain, set out, determine, and fix the same respectively; and after the said boundaries shall be so ascertained, set out, determined, and fixed, the same are hereby declared to be the boundaries of such parishes, manors, hamlets, or districts: Provided, that such commissioner or commissioners (before he or they proceed to ascertain and set out the boundaries of such parishes, &c.) shall give public notice, by writing under his or their hands to be affixed on the most public doors of the churches of such parishes, and also by advertisement to be inserted in some newspaper to be named in such act, and also by writing to be delivered to or left at the last or usual places of the abode of the respective lords or stewards of the lords of the manors in which the grounds to be inclosed shall be situate, and of such adjoining manor or manors, ten days at least before the time of setting out such boundaries, of his or their intention to ascertain, set out, and determine and fix the same respectively; and such commissioner or commissioners shall, within one month after ascertaining and setting out the same, cause a description thereof in writing to be delivered to or left at the places of abode of one of the churchwardens or overseers of the poor of the respective parishes, and also of such respective lords or stewards: Provided, that if any person interested in the determination respecting the said boundaries be dissatisfied with such determination, such person or persons may appeal to the justices acting in and for the county in which such grounds shall be situate, at any general quarter sessions to be holden within four calendar months next after the aforesaid publication of the said boundaries, by delivering or leaving such description as aforesaid; the party or

Commissioners to cause a description of boundaries to be delivered to one of the churchwardens, &c. of the parishes, and the lords of manors, or their stewards.

Persons dissatisfied may appeal.

Commissioners.

(*a*) *Doe* v. *Middleton*, *H.* 2 & 3 *G.*4. 2 *Brod.* & *Bing.* 214. Where *three* commissioners and their successors were appointed to transact the business under an inclosure act, and the act of any *two* of them was to be valid, an assessment executed by *two*, after the death of one of the three, and before the appointment of a successor was holden invalid, there not being three commissioners in existence at the time.

parties making such appeal, giving eight days' notice of such appeal and of the matter thereof in writing to the commissioners; and the decision of the said justices therein shall be final, and not removable by *certiorari* or any other process.

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Decision at the sessions to be final.

Rex v. *Inhabitants of St. Mary, in Bury St. Edmunds, E.* 2 *G.* 4. 4 *B.* & *A.* 462. Order of removal from *Rougham* in *Suffolk*, to *St. Mary*, in *Bury St. Edmunds*. Confirmed by sessions subject to the opinion of K. B., on the following case: — The pauper in 1783, gained a settlement by hiring and service, in a house called *Eldo Farm*, which lay partly in *Rougham* and partly in *St. Mary*, in *Bury*. He had, at different times afterwards, in the course of 30 years and upwards, and up to the time of the removal, been relieved by *Rougham*, while living in another parish. In the years 1813 and 1814, separate inclosures took place of lands in *Rougham* and *Bury*. Under the *Rougham* inclosure act, in 1813, the commissioners, in their award, ascertained and fixed the boundary line between *Rougham* and *St. Mary*, in *Bury*, and thereby included within the latter the apartment in which the pauper slept during his service at the *Eldo Farm*; and the commissioner under the *Bury* inclosure act, in 1814, also ascertained and fixed the boundaries of *Bury* by his award, and thereby found and declared, that the boundary of the parish of *St. Mary* in *Bury*, proceeded along the boundary of *Rougham* parish, through the *Eldo Farm* house, as the same had been ascertained and fixed under the *Rougham* inclosure. In a perambulation also made subsequently to these acts, the parishioners of *Bury* included the apartment in which the pauper slept within the parish of *St. Mary* in *Bury*. These facts being proved by the respondents, the appellants contended, that the boundary line set out by the commissioners was not conclusive, as to the actual boundary before the award, and tendered to the court evidence to prove, that, before the inclosure acts, the spot in question was in *Rougham*. This evidence was objected to; and the sessions, considering the award of the commissioners as retrospective and conclusive, rejected the evidence, and confirmed the order of removal.—After argument, *Abbott* C. J. said, It seems to me, that great mischief might follow, if the court were to hold, that the decision of the commissioners in this case, as to the boundaries of the parish, was conclusive, and at the same time retrospective; for many cases may be put, both of fines of lands and wills, in which such a decision might materially affect the rights of third persons. The best and safest course, therefore, will be, to hold such determination not to be conclusive evidence of what the boundaries were previously to the period when it was made. In that case the sessions ought to have received the evidence which they have rejected; and I think, therefore, that the order of sessions should be quashed, and the case sent back to be re-heard. The other judges concurring — Case sent back to the sessions.

The determination of the commissioners under an inclosure act, as to the boundaries of a parish to be inclosed, is not conclusive of fact as to what were the boundaries *antecedently* to such determination.

§ 4. A true, exact, and particular survey, admeasurement, plan, and valuation of all the lands and grounds to be divided, allotted, and inclosed by any such act, and also of all the messuages, cottages, orchards, gardens, homesteads, ancient inclosed lands and grounds, within any such parish or manor, shall be made and reduced into writing, by such commissioner or commissioners, or by such other person or persons as he or they shall nominate

A survey, admeasurement, plan, and valuation, of the lands, &c. to be inclosed, shall be made, and kept by the

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Commissioners, which shall be verified by the persons making the same.

and appoint, as soon as conveniently may be, for the purposes of such act, and the number of acres and decimal parts of an acre, in statute measure, contained in all the grounds directed to be divided, allotted, and inclosed, and also in all the ancient inclosed lands, grounds, and homesteads aforesaid, and of every proprietor's distinct property in the same respectively at the time of making such survey and admeasurement, shall be therein set forth and specified; and the said survey, &c. shall be kept by such commissioner or commissioners; and the person or persons who shall make such survey, &c. shall verify the same upon oath or affirmation at any meeting held after the making thereof (which oath or affirmation the commissioners, or any one of them, are and is required to administer); and the proprietors and their agents and all persons interested shall at all seasonable times have liberty to peruse and inspect such admeasurement and plan only, and to take copies thereof and extracts therefrom respectively.

Proprietors may inspect admeasurements and plans, and take copies.

Until the division be completed the lands may be entered by the commissioners, or any persons they may appoint, to make surveys, &c.

§ 5. And for surveying, admeasuring, and valuing all the said lands and grounds, and for other the purposes of such act, such commissioner or commissioners, every or any of them, or the person or persons appointed by him or them to make such survey, admeasurement, plan, and valuation, together with their assistants and servants, at any time or times, until such division be completed, may enter, view, and examine, survey and admeasure every part of the grounds intended to be divided and allotted, and also all the ancient inclosed lands, grounds, and homesteads directed to be surveyed, and may do or cause to be done any thing necessary for putting such act into execution: Provided always, that any map or survey made at the time of passing any such act, which shall be tendered to such commissioner or commissioners, and which shall be, in his or their judgment, and to his or their satisfaction, a just and true map or survey, proper for the purpose of carrying such act into execution, may be used for that purpose, if the said commissioner or commissioners shall think fit, without any new map or survey being made of such part of the lands and grounds, as shall be comprised in any such approved map or survey as aforesaid.

Maps made at the time of passing acts, may be used, without making new ones, if the commissioners think fit.

Claimants of rights in lands to be inclosed to deliver to the commissioners schedules of particulars, or be excluded; which claims may be inspected, and copies taken.

§ 6. And all persons, and bodies corporate or politic, who shall have or claim any common or other right to or in any such lands so to be inclosed, shall deliver or cause to be delivered to such commissioner or commissioners, or one of them, at some one of such meetings as the said commissioner or commissioners shall appoint for the purpose, (or within such further time, if any, as the said commissioner or commissioners shall for some special reason think proper to allow for that purpose,) an account or schedule in writing, signed by them, or their respective husbands, guardians, trustees, committees, or agents, of such their respective rights or claims, and therein describe the lands and grounds, and the respective messuages, lands, tenements, and hereditaments, in respect whereof they shall respectively claim to be entitled to any and which of such rights in and upon the same, or any part thereof, with the name or names of the person or persons then in actual possession, and the particular computed quantities of the same respectively, and of what nature and extent such right is, and also in what rights, and for what estates and interests they claim the same respectively, distinguishing the freehold from the

copyhold or leasehold; or on non-compliance, every of them making default therein shall, as far as respects any claim so neglected to be delivered, be totally barred of all right and title in or upon such lands so to be divided, and of all benefit in any share or allotment thereof; all which said claims or accounts shall, at all seasonable times until after the execution of the said award, be open to the perusal of all parties interested or claiming to be interested in the premises, and their respective agents, who may take copies thereof or extracts therefrom; and if any person or persons, or body politic or corporate interested, or claiming to be interested, shall have any objection to offer to any such account or claim, the particulars of such objection shall be reduced into writing, and signed by them or their respective husbands, guardians, trustees, committees, or agents, and shall be delivered to the said commissioner or commissioners, at or before some other meeting of such commissioner or commissioners, to be by him or them appointed for that purpose; and no such objection shall afterwards be received, unless from some legal disability or special cause to be allowed by the said commissioner or commissioners.

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Objections to claims to be delivered to the commissioners at or before the meeting appointed for the purpose, or shall not be received except for special cause.

§ 7. Provided, that nothing herein shall authorize such commissioner or commissioners to hear and determine any difference which may arise touching the right or title to any lands, tenements, or hereditaments, but such commissioner or commissioners shall assign and set out the several allotments directed to be made unto the person or persons, who, at the time of the division and inclosure, shall have the actual seisin or possession of the lands, tenements, or hereditaments, in lieu or in right whereof such allotment shall be made: Provided also, that no difference or suit touching the title shall delay the commissioner or commissioners in the execution of the powers vested in him or them, by virtue of any such act; but the division or inclosure directed to be made shall be proceeded in notwithstanding such difference or suit.

Commissioners not hereby authorized to determine disputes touching rights; but they shall assign the allotments to the persons in actual possession of the lands, in lieu whereof made.

§ 8. And such commissioner or commissioners shall, in the first place, before he or they proceed to make any of the divisions and allotments directed by any such act, set out and appoint the public carriage roads and highways through and over the grounds intended to be divided, allotted, and inclosed, and divert, turn, and stop up any of the roads and tracts upon all or any part of the said lands and grounds, as he or they shall judge necessary, so as such roads and highways shall be and remain 30 feet wide at least, and shall be set out in such directions as shall upon the whole appear to him or them most commodious to the public; and he or they shall ascertain the same by marks and bounds, and prepare a map, in which such intended roads shall be accurately laid down and described, and cause the same, being signed by such commissioner, if only one, or the major part of such commissioners, to be deposited with the clerk of the said commissioner or commissioners, for the inspection of all persons concerned; and as soon as may be after such carriage roads shall have been so set out, and such a map so deposited, shall give notice in some newspaper to be named in such bill, and also by affixing the same upon the church door of the parish in which any of the lands so to be inclosed shall lie, of his or their having set out such roads and deposited such map, and also of the general lines of such intended

Commissioners before making any allotments to appoint public carriage roads, and prepare a map thereof to be deposited with their clerk, and give notice thereof, and appoint a meeting; at which, if any person shall object, the commissioners, with a justice of the division, shall determine the matter.

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carriage roads, and shall appoint in the same notice a meeting to be held by the said commissioner or commissioners, at some convenient place, in or near the parish or township within which the said inclosure is to be made, and not sooner than three weeks from the date and publication of such notice; at which meeting any person injured or aggrieved by the setting out of such roads may attend; and if any such person shall object to the setting out of the same, then such commissioner or commissioners, together with any justice or justices acting in and for the division of the county in which such inclosure shall be made, and not being interested in the same, who may attend such meeting, shall hear and determine such objection, and the objections of any other such person, to any alteration that the said commissioner or commissioners, together with such justice or justices, may in consequence propose to make; and shall, according to the best of their judgment upon the whole, order and finally direct how such carriage roads shall be set out, and either confirm the said map or make such alterations therein as the case may require: Provided, that if such commissioner or commissioners shall by such bill be empowered to stop up any old or accustomed road passing or leading through any part of the old inclosures in such parish, township, or place, the same shall in no case be done without the concurrence and order of two justices acting in and for such division, and not interested in the repair of such roads; and which order shall be subject to an appeal to the quarter sessions, in like manner and under the same forms and restrictions as if the same had been originally made by such justice as aforesaid.

If the commissioners, by any bill, shall be empowered to stop up any old road, it shall not be done without the order of two justices, and which shall be subject to appeal, to the quarter sessions.

Rex v. *Townsend*, *H.* 2 *G.* 4. 5 *B.* & *A.* 420. By 55 *G.* 3. *c.* 43. § 15. (an act passed for inclosing lands in the parish of *Hartlebury*, in the county of *Worcester*), the commissioner thereby appointed was authorised to stop up, alter, or change any old carriage road, bridle way, or footpath, passing or leading through any of the old inclosures within the said parish, provided that no such carriage road, bridle way, or foot path, leading through any of the old inclosures of the said parish should be stopped up, altered, or changed, without the concurrence and order of two justices of the peace, and which order should be subject to an appeal to the quarter sessions for the county of *Worcester*, in like manner, and under such forms and restrictions as if the same had been originally made by such justices. By § 36. any person thinking himself aggrieved by any thing done in pursuance of the act, was to be at liberty to appeal to the general quarter sessions of the peace, which shall be holden for the county of *Worcester*, within six months next after the cause of complaint should have arisen. Under this act the defendant was appointed commissioner, and on the 17th *August*, 1820, made an order with the concurrence of two justices of the peace for the county of *Worcester*, for stopping up a certain footpath leading through the old inclosures. Against this order, one *S. B.* appealed at the *Epiphany* sessions, 1821, and the order was quashed. It was contended on behalf of the defendant at the sessions, that the court had no jurisdiction, because, by the 55 *G.* 3. *c.* 68. an appeal against a similar order of two justices must be to the next sessions; but the counsel for the appellant urged, that the quarter sessions had jurisdiction, unless it could be shewn, that due notices of the order for stopping up the foot-

By a clause in an inclosure act, a commissioner was authorised to stop up any way, provided it be done by the order, and with the concurrence of two justices, and that order was to be subject to an appeal in like manner, and under such form and restrictions as if the same had been originally made by such justices. By a subsequent clause, any party aggrieved was to be at liberty to appeal at any time within six months after the cause of complaint.

way had been given, as required by stat. 55 *G*. 3. *c*. 68., previously to the *Michaelmas* sessions, 1820; and the court of quarter sessions required the defendant to prove, that such notice was given previously to those sessions, and that not being proved, they heard the appeal, and quashed the order. This order of sessions having been moved into the court of K. B. by *certiorari*, a rule *nisi* was obtained for quashing it for insufficiency, on the ground that the appeal ought to have been to the *Michaelmas* sessions.— After argument, *Abbott* C. J. I am of opinion that this rule ought to be discharged. By § 15. of the inclosure act, the appeal is to be to the quarter sessions, in such manner and under such forms and restrictions, as if the order had been originally made by two justices. The act clearly contemplates an order afterwards to be made. To what sessions then must the party have appealed, if the original order for stopping up the road had been made by two justices? By 55 *G*. 3. *c*. 68., the appeal against such an order must have been, not to the next quarter sessions after making the order, but to the sessions that should be holden next after the expiration of four weeks from the first day on which the notices therein required were published. In this case no notices were ever published, and therefore, if the order in question had originally been made by two justices, the appeal could not have been to the *Michaelmas* sessions. The mode of appeal, therefore, pointed out in the 15th section was rendered impracticable, by the omission to give the notices required; but notwithstanding that omission, a party might be aggrieved by the stopping up of the road; and yet, according to the argument, if the 36th section is to be controlled by the 15th, he could have no appeal whatever, until the notices were published, which might not happen. I do not, however, mean to pronounce any decision, whether it be incumbent upon a commissioner, in the case of stopping up a way, under an inclosure act, to give the notices required by stat. 55 *G*. 3. *c*. 68. But at all events, those notices not having been given in this case, I am of opinion, that the mode of appeal pointed out in the 15th § having become impracticable, the party aggrieved was entitled to appeal at any time within six months. *R. D.*

Under this act, the commissioner, with the concurrence and order of two justices, stopped up a road without giving the public notices required by the 55 G. 3. c. 68. Held, that a party aggrieved might, under these circumstances, appeal at any time *within six months*. Quære, whether it be necessary to give such notices where roads are stopped up under the provisions of an inclosure act?

Harber v. *Rand*, *H*. 1821. 9 *Price* 58. A local inclosure act empowered the commissioners *with the concurrence and order of two justices* of the peace, to *stop up* and discontinue any of the roads or ways, *in, through, over, or on the sides of* the inclosed lands. The general inclosure act, 41 *G*. 3. *c*. 109. *s*. 8. requires the commissioners, first to appoint and set out the *public carriage roads and highways*, and to describe them by metes and bounds in a map; of all which notice is to be given in a public newspaper, and a meeting is to be advertised, whereat any person aggrieved *by the setting out* of such carriage roads, may attend and complain, and a commissioner, or the commissioners and two magistrates, are to determine such complaints, and to alter and finally confirm the map. It is then provided (in the same section), that *no old* or *accustomed road*, passing or leading *through* the old inclosures, which the commissioner or commissioners may be by any bill authorized to stop up, *shall be stopped up* in any case *without the concurrence and order of two justices of the peace* acting, &c., and *such order shall be subject to an appeal* to the quarter

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sessions. By the 10th § (of the general act) the commissioners are empowered to *set out* and appoint such *private roads*, &c. *in, over, upon, and through, or by the sides of* allotments, as they shall think fit, giving such notice. By the 11th § it is provided, *that all roads, ways, and paths, over, through, and upon such lands and grounds*, which shall not be set out as aforesaid, *shall be for ever* stopped up and extinguished, and shall be deemed and taken as part of the lands and grounds to be divided, allotted, and inclosed. The commissioners published in the newspapers the roads set out, and advertised the required meeting also in the newspaper, announcing therein, that any person *injured* or *aggrieved* by the setting out such roads, or *by the omission of any other*, might attend and they would be heard. After that meeting, the commissioners and two magistrates made and signed an order *confirming* the map, and the roads and footways therein described, excepting three which were specified, and such map was annexed to the award.—A proprietor of one of the new inclosures brought an action of trespass for breaking his close, &c.; the defendant justified under an alleged right of way, and proved an ancient footpath over the *locus in quo*. On a special case, stating that such old footpath *had been omitted by the commissioners in preparing the map* of roads, &c. set out: The Court of Exchequer decided, that the old way *was not stopped up* and extinguished, according to a true construction of the acts of parliament, by what had been done by the commissioners and magistrates for that purpose, and with that intention: the *positive* concurrence and order of two magistrates being indispensably necessary to the stopping up of the roads, whether they be public carriage roads *or private or bridle and foot roads*. Nothing short of *an order* of two magistrates *expressly stopping up the road* will satisfy the statute; merely *not setting it out*, is *not sufficient to extinguish it*, even in the case of *a private road, bridle, or foot way.*

The carriage roads shall be fenced on both sides by such of the land owners as the commissioners shall direct, and no person shall erect any gate across any road, or plant any trees on the sides, at less than 50 yards distance.

The commissioners shall appoint surveyors, and if with a salary, such salary and the expense of making the road, over and above the statute duty, shall

And by the same stat. § 9. such carriage roads shall be sufficiently fenced on both sides by such of the owners and proprietors of the lands and grounds intended to be divided, allotted, and inclosed, and within such time as such commissioner or commissioners shall by any writing appoint; and it shall not be lawful for any person or persons to set up any gate across any such carriage road, or to plant any trees in or near to the hedges on the sides thereof, at a less distance from each other than 50 yards; and such commissioner or commissioners shall, by writing under his or their hand, appoint one or more surveyor or surveyors with or without a salary for the first forming and completing such parts of the said carriage roads as shall be newly made, and for putting into complete repair such part of the same as shall have been previously made, which salary (if any) and also the expense of forming, completing, and repairing such roads respectively, over and above a proportion of the statute duty on the roads so to be repaired, shall be raised as the charges of obtaining such act and carrying the same into execution shall be thereby directed to be raised, and shall be paid to such surveyor or surveyors on or before the execution of the award of such commissioner or commissioners; and if the same be thereby provided to be raised by sale of any part of the lands so to be divided and inclosed, then such commissioner or commissioners shall make a conditional rate upon the owners and proprietors of the

same, in case the produce of such sale should prove insufficient for the purposes aforesaid; and such surveyor or surveyors shall, and he or they is and are hereby directed to be in all respects subject to the jurisdiction and controul of the justices acting in and for the county in which such roads shall respectively lie, and shall account to such justices in like manner for all monies so to be by him or them received and expended, and for the repayment of any surplus which may remain in his or their hands to such persons as shall have been made liable to contribute thereto, according to the proportion so as above ascertained by such commissioner or commissioners; and such justices shall have the like powers of levying any such rate as may by them be thought necessary for the purposes aforesaid, according to the proportions previously ascertained by such commissioner or commissioners, as if such surveyor or surveyors had been appointed by virtue of the general highway act passed in the 13 *G.* 3.; and in case such surveyor or surveyors shall neglect to complete and repair such roads respectively within two years after such award, unless a further time, not exceeding one year, be allowed by such justices, and then, within such further time, he or they shall forfeit the sum of 20*l.*; and the inhabitants at large of the parish, township, or place wherein such roads shall be respectively situate, shall be in no wise charged or chargeable towards forming or repairing the said roads, except such proportion of such statute duty as aforesaid, till such time as the same shall by such justices in their special sessions be declared to be fully and sufficiently formed, completed, and repaired; from which time, and for ever thereafter, the same shall be supported and kept in repair by such persons and in like manner as the other public roads within such parish, township, or place, are by law to be amended and kept in repair.

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be raised as other expenses, and paid on or before execution of the award.

Surveyors to be subject to the controul of the justices, and shall account to them for monies received.

Justices may levy rates.

Surveyors neglecting to complete roads within a limited time to forfeit 20l. and the inhabitants not to be chargeable to them (except statute duty), till declared to be completed at a special sessions.

§ 10. Such commissioner or commissioners shall set out and appoint such private roads, bridleways, footways, ditches, drains, water-courses, watering-places, quarries, bridges, gates, stiles, mounds, fences, banks, bounds, and land marks, in, over, upon, and through or by the sides of the allotments, as he or they shall think requisite, giving such notice and subject to such examination as to any private roads or paths, as are above required in the case of public roads; and the same shall be made, and at all times for ever thereafter be kept in repair at the expence of the owners and proprietors, for the time being, of the lands and grounds directed to be divided and inclosed, in such shares and proportions as the commissioner or commissioners shall by his or their award direct.

Commissioners shall appoint private roads, &c.

§ 11. After such public and private roads and ways have been set out and made, the grass and herbage arising thereon shall for ever be the sole right of the proprietors of the grounds which shall next adjoin the said roads and ways on either side thereof, as far as the crown of the road; and all roads, ways, and paths, over, through, and upon such grounds which shall not be set out as aforesaid shall be for ever stopped up and extinguished, and shall be deemed part of the grounds to be divided, allotted, and inclosed, and shall be divided, allotted, and inclosed accordingly (*a*): Pro-

The grass and herbage on roads shall belong to the proprietors of the lands adjoining on either side; and all roads not set out shall be allotted and inclosed.

(*a*) *White* v. *Reeves and another*, *H.* 58 *G.* 3. 2 *Moore*, *C. P. R.* 23. The plaintiff, having an allotment made to him by a commissioner, under an inclosure act,

Private way, how stopped up

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No turnpike road shall be altered without the consent of the trustees.

vided, that nothing herein shall extend to give such commissioner or commissioners any authority to divert, change, or alter any turnpike road that may lead over any such grounds, unless the consent of the majority of the trustees of such turnpike road, assembled at some public meeting called for that purpose on ten days' notice, be first obtained.

Commissioners to have regard to the situation of houses as well as the quantity and quality of land, as far as consistent with general convenience.

§ 12. Such commissioner or commissioners in making the several allotments shall have due regard as well to the situation of the respective houses or homesteads of the proprietors, as to the quantity and quality of the lands and grounds to be allotted to them respectively, so far as may be consistent with the general convenience of the said proprietors; and such commissioners in making the said allotments shall have particular regard to the convenience of the proprietors of the smallest estates in the grounds directed to be allotted and exchanged.

Commissioners may direct small allotments to be laid together and ring-fenced and stocked and depastured in common by the proprietors.

§ 13. Whereas the proprietors and persons interested in open common fields, meadows, pastures, commons, and waste lands, directed to be divided and allotted, whose allotments thereof will be small and expensive to inclose, may be desirous of stocking and depasturing their allotments in common, and of sharing such produce as may grow thereon, under proper regulations; it is enacted that such commissioner or commissioners shall be impowered on application of the parties interested, at their first or second meeting for receiving claims, and on an attentive view and full consideration of the premises, to award, order, and direct any such allotments to be laid together and ring-fenced, and to be stocked and depastured in common, and to make such regulations for the equitable enjoyment thereof, and for the participation of any produce growing or to grow thereon, as such commissioner or commissioners may think proper for the said several parties interested therein.

Allotments to be in full compensation for all rights in the lands, which shall cease on notice from the commissioners being affixed on the door of the parish church.

§ 14. The several shares of and in any grounds upon any such division assigned, set out, allotted, and applied unto and for the several persons entitled to the same shall, when so allotted, be in full bar of and compensation for their respective lands, grounds, rights of common, and all other rights and properties whatsoever, which they respectively had or were entitled to, in, and over the said grounds immediately before the passing of any such act; and immediately from the making of the said division and allotments, and the execution of the award, or at any other time as such commissioner or commissioners shall, by writing under his or their hands, to be affixed on the principal door of the church of the parish in which the lands and grounds shall be situate, direct or appoint all rights of common and all rights whatsoever by such act intended to be extinguished, belonging to or claimed by any person or persons whomsoever, bodies politic or corporate, in, over, or upon such lands or grounds, shall cease and be for ever extinguished.

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by a commissioner under the general inclosure act.

of land, over which the defendants had a *private* right of way before the passing of the act, but which way was not noticed or described amongst those set out by the commissioner appointed for executing that act, (the operation of which, as to the powers of setting out or stopping up roads, was left to the general inclosure act, 41 *G.*3. *c.*109) may, under the 11th section of the latter statute, justify the stopping up of such way, without any directions from the commissioners for that purpose in the award, or any other road being set out or appointed in lieu of it.

§ 15. And such commissioner or commissioners shall set out, allot, and award any messuages, buildings, lands, tenements, hereditaments, new allotments, or old inclosures, within such parish or manors, in lieu of or in exchange for any other messuages, &c. within the said parish or manors, or within any adjoining parish or place; so as that all such exchanges be made with the consent of the respective persons, seised of the lands, hereditaments, and premises which shall respectively be so exchanged, or of the husbands, guardians, trustees, committees, or attornies acting for such owners, proprietors, or other persons respectively, who are under coverture, minors, lunatics, or beyond the seas, or under any other disability or incapacity of acting for themselves, (such consent to be testified by writing under their respective hands,) and so that all such exchanges be ascertained, specified and set forth in the award of such commissioner or commissioners: and so that all such exchanges of any lands, tenements, or hereditaments, belonging to, or held in right of any church, chapel, or ecclesiastical benefice, shall also be made with the like consent in writing of the bishop of the diocese, and of the patron of any church, chapel, or ecclesiastical benefice for the time being; and all such exchanges so made as aforesaid shall be for ever good, valid, and effectual in the law, to all intents and purposes whatsoever.

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Commissioners may exchange by allotments, messuages, lands, &c. with the consent of the proprietors, or if belonging to churches, &c. with the consent of the bishop and of the patron.

§ 16. Any such commissioner or commissioners (upon the request in writing of any persons entitled to allotments, and being joint tenants or coparceners, or tenants in common, or any or either of them, or of the husbands, guardians, trustees, committees, or attornies of such as are under coverture, minors, lunatics, or under any other incapacity as aforesaid, or absent beyond seas) may make partition and division of the messuages, cottages, tenements, lands, and allotment or allotments to such of the said owners or proprietors who shall be entitled to the same as joint tenants, coparceners, or tenants in common, and may allot the same to them accordingly, in severalty; and immediately after the said allotments shall be so made and declared, the same shall be by such person or persons holden in severalty, in such manner and subject to the same uses as the undivided parts of such estates would have been held in case such partition had not been made.

Commissioners may make allotments in severalty to joint tenants, or tenants in common.

§ 17. And every person to whom any allotment or allotments shall be made by virtue of any such act shall accept his, her, and their respective allotments within two calendar months next after the execution of the award, directed by any such act; and in case any person shall neglect or refuse to accept of their allotment within such time, such person shall be totally excluded from having or receiving any estate or interest, or right of common whatsoever, in any part of the land to be divided and inclosed by virtue of any such act.

Persons to accept their allotments in a limited time, or forfeit their right.

§ 18. Provided, that it shall be lawful for the respective guardians, husbands, trustees, committees, or attornies of any minors, femes covert, lunatics, persons beyond the seas, or otherwise incapable by law, to accept any such allotments for the use of such persons so incapacitated; and also that any person entitled to any allotment as tenant for life or lives shall accept of and take such allotment or allotments respectively: Provided further, that the

Guardians, &c. may accept for incapacitated persons, and tenants for life shall accept of allotments.
Non-accept-

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ance of guardians, &c. shall not prejudice the rights of incapacitated persons who shall accept in a limited time after enabled so to do.

non-claim or non-acceptance of any such guardian, husband, trustee, committee, or attorney, shall not in any way prejudice the right of any infant, or other person being under any disability as aforesaid, or absent beyond the seas, who shall claim or accept such allotment within 12 calendar months next after such disability or incapacity shall be removed, or of any entitled as heir in remainder after the death of any person dying during such incapacity or disability, who shall claim or accept the same within one year next after their right, title, or interest shall have accrued, descended, or vested, or be known so to be.

Before execution of the award allotments may be ditched and inclosed, with consent of the commissioners.

§ 19. And after the allotments shall be set out by such commissioner or commissioners, and at any time before the execution of the award, any person to whom any allotment shall be so made and staked or marked out may, with the consent of such commissioner or commissioners in writing under his or their hands, ditch, fence off, and inclose their respective allotments in such manner as such commissioner or commissioners shall so appoint.

Trees, &c. to be allotted with the lands whereon they stand, the parties paying to the owners such sums as the commissioners shall direct; but in case of neglect the owners may cut them down and take them away.

§ 20. The timber trees and other trees, thorns, and bushes, standing and growing upon any waste or other lands to be allotted by such act, shall be allotted and go along with the lands whereon they respectively stand, and be deemed the property of those to whom the same lands shall be respectively allotted, such persons paying to the respective owners of the said trees such sums of money for the same and at such time or times, and place or places, as the said commissioner or commissioners shall, by writing under his or their hands, direct: but if the said parties who are to make such respective payments shall neglect or refuse to make the same accordingly, then it shall be lawful for the respective parties entitled to receive such payments to enter on the said lands, and cut down, take, and carry away to their own use, the said trees, thorns, or bushes, in respect of which the said payments were to be made at any seasonable time or times within one year next after such default, they doing as little damage on the said lands as may be.

Where money is to be paid for lands, &c. and which ought to be laid out in other purchases to be settled to the same uses, the commissioners may thereout defray a proportion of the expenses of passing the act, &c.; and if the surplus amount to 200l. it shall, as soon as may be, be laid out in other purchases, and in the mean time be paid into the bank, and applied under the

§ 21. Whenever any sum of money is under the provision of this act, or any such bill, to be paid for the purchase or exchange of any lands, tenements, or hereditaments, or of any timber or wood growing thereon, and money ought to be laid out in the purchase of other lands, tenements, or hereditaments, to be settled to the same uses, it shall be lawful for such commissioner or commissioners out of such sum to defray such proportion of the expense of passing such act, and of carrying the same into execution, as shall, if any, be charged upon any of the lands, tenements, or hereditaments of the person or persons, body politic or corporate, trustees or feoffees, in possession of the lands, tenements, or hereditaments so sold or exchanged, or on which such timber or wood actually grew, and also the expense of any permanent improvement, such as building, subdividing, draining, or planting, and the like, which shall in the judgment of such commissioner or commissioners be proper to be made, and shall be made under his or their direction, upon any lands to be by virtue of such act allotted to such person or persons, body politic or corporate, trustees or feoffees respectively; and if the surplus of such money amount to the sum of 200*l.* then the same shall, with all convenient speed, be invested in the purchase of

any lands or hereditaments which shall be conveyed and settled upon, and subject to the like uses, trusts, and limitations as those of such lands so sold or exchanged, or the lands on which such timber grew; and until such purchase can be made, such money shall be paid into the bank of *England* in the name of the accountant general of the high court of chancery, to be placed to his account there *ex parte* the said commissioner or commissioners, without fee, to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way, by the person or persons who would have been entitled to such lands, tenements and hereditaments, or timber respectively, either toward the redemption or purchase of land-tax, or towards the discharge of any incumbrances affecting the lands or hereditaments so purchased or exchanged, or on which such timber grew, or until the same shall upon the like application in a summary way, be laid out by order of the said court in the purchase of other lands or hereditaments to be settled to the like uses; and until order can be made, such money may, by order of the said court, be laid out in some of the public funds or on government or real securities; and the dividends or interest arising therefrom shall, by order of the said court, be paid to such person or persons as would for the time being be entitled to the rents and profits of such lands, tenements, and hereditaments, so to be purchased, conveyed, and settled.

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direction of the court of chancery.

§ 22. Provided, that if any such money shall be less than 200*l.* and shall exceed 20*l.* then the same shall, at the option of the person or persons for the time entitled to the rents and profit of the lands or hereditaments so purchased, or of their guardian or committee in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the bank in the name of the said accountant general, and be placed to his account as aforesaid, in order to be applied in the manner before directed; or otherwise the same shall be paid at the like option to two trustees to be nominated by the person making such option, and approved of by the commissioner or commissioners (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties,) in order that such principal money and the dividends may be applied as herein before directed so far as the case be applicable, without obtaining or being required to obtain the direction or approbation of the said court.

If such money be less than 200l. and upwards of 20l. it shall at the option of the person entitled to the rents of the lands, be paid into the bank, or to two trustees to be approved of by the commissioners, to be applied as before directed;

§ 23. Provided also, that where such money shall be less than 20*l.* then the same shall be applied to the use of the person who would for the time being have been entitled to the rents and profits of the lands or hereditaments so purchased, in such manner as the said commissioner or commissioners shall think fit, or in case of infancy or lunacy then to the guardians or committees, for the benefit of such persons so entitled respectively.

and if less than 20l. it shall be applied to the use of the person entitled to the rents of the lands, as the commissioners shall think fit.

§ 24. If any person to whom any allotment or allotments shall be made, or any guardian, husband, trustees, feoffees, committees, or attorney of any infant, feme covert, charity or charities, lunatic, idiot, person or persons beyond the seas, or otherwise incapable of acting respectively, or any tenant in tail, or for life, or trustee or trustees for any settlement, or any mortgagee or mortgagees,

If any person does not accept, inclose, and fence his allotment as the commissioners

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direct, they may inclose, fence, and let it, and receive the rents until the expenses are satisfied, or they may charge them upon the proprietor.

or other creditor in possession, shall neglect or refuse to accept, inclose, and fence their allotment or allotments within such time or times as such commissioner or commissioners by any writing as aforesaid, or by his or their award shall order, it shall be lawful for such commissioner or commissioners to cause such allotment or allotments to be inclosed and fenced, and to let the same to any person or persons he or they may think proper, and to receive the rents and profits thereof until the expenses attending the inclosure and fencing thereof are paid and satisfied, or to charge such expenses upon the proprietor or proprietors of the same allotment or allotments; and by any such writing as aforesaid, or by his or their said award, to appoint to whom, and at what time or times the same shall be paid, subject to the same mode, and with the like powers of recovery thereof, as may be provided respecting the other expenses of passing any such act, and carrying the same into execution, or otherwise directed by any such act.

Within 7 years after fencing of allotments, fences may be erected on the outside of the ditches, and the materials carried away by the proprietors.

§ 25. The several proprietors of the allotments to be made in pursuance of any such act, their agents or workmen, may at any seasonable time or times within the space of seven years next after the fencing of any allotment, set up posts and rails or other dead fences, on the outside of the ditches bounding their respective allotments, not exceeding three feet from such ditches, for the preservation of their quickset hedges, and at any seasonable time before the expiration of the said term may carry away the materials of such outside fences when they shall think proper.

No fences or hedges standing when any act is passed, shall be destroyed till the execution of the award without consent of the commissioners, and if assigned by them as boundary or division fences, they shall be left uncut, the persons to whom the allotments shall belong making compensation to the former owners.

§ 26. And no fences or hedges which at the time of the passing of any such act shall be standing or growing in or upon any of the lands directed to be divided and inclosed shall be cut down or destroyed by the proprietors thereof, after the passing of such act, until the execution of the award, without the consent of such commissioner or commissioners first obtained in writing; and if any such shall be assigned or approved by such commissioner or commissioners as a boundary fence, or as a subdivision fence for any of the allotments to be made in pursuance of such act, all such shall be left uncut for the benefit of the persons to whom such allotments shall belong; and they shall make such compensation in money to the former proprietors thereof, as such commissioner or commissioners shall, by writing under their hands, in that behalf appoint, subject to the same mode and with the like powers of recovery thereof as may in such act be provided respecting the other expenses of passing any such act, and carrying the same into execution.

Where the boundary of any common fields or inclosed grounds shall be fenced by any mound, &c. the proprietors of the adjoining allotments shall not

§ 27. Provided, that no proprietors whose allotments or shares shall upon any such inclosure be situate next and adjoining to any common fields or inclosed grounds, the boundary of which shall be fenced by any mound, fence, brook, or rivulet, shall be compelled to make any hedges, ditches, or fences, next adjoining to any such common fields or inclosed grounds, for inclosing such their allotments or shares; but that the whole mound, fence, brook or rivulet, or other sufficient fences which divide any such common fields or inclosed grounds from such allotments shall for ever be and remain a boundary fence for the purpose of such division, and shall from time to time be maintained, scoured, and repaired

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by the respective proprietors thereof, as before the passing of this act, or in such other manner as such commissioner, &c. shall direct: Provided nevertheless, that in case it shall happen that some of the proprietors shall have a greater proportion of fences to make and maintain upon any of the lands directed to be divided and inclosed than in the judgment of such commissioner, &c. the allotments of such proprietors ought to be charged with, it shall be lawful for such commissioner, &c. where he or they judge it proper, to ascertain and appoint such sum of money to be paid to every such proprietor towards making and maintaining such fences, by such other of the proprietors who may have a less proportion of fencing, according to the value and quantity of the lands to be allotted to them, and to grant such other relief in respect thereof out of the money to be raised for defraying the expences of carrying such act into execution, as he or they shall think reasonable, and in case any such money shall be so directed to be raised, in order that the said boundary fences may be brought as near as may be to a just and equal proportion.

be compelled to fence them next such common fields and inclosed grounds, but such boundaries shall be maintained by the respective proprietors; the expenses of which the commissioners may apportion.

Any person destroying or damaging any fence, &c. put up under the authority of any act, shall forfeit 5l., and the proprietor of the lands, &c. may give evidence.

§ 28. In case any person shall wilfully and unlawfully break down, destroy, carry away, or damage any fence, stile, post, rail, gate, bridge, or tunnel, which may be put up under the authority and for the purposes of any such act, every person so offending and being thereof convicted before any justice for the county in which the grounds to be inclosed shall be situate, on confession or on proof by oath of one credible witness, shall for every such offence forfeit not exceeding *5l.*; and every person shall be allowed to give evidence of such offence notwithstanding he may be a proprietor or occupier of lands within or an inhabitant of such parish, and notwithstanding he may be the owner of any such fence, stile, post, rail, gate, bridge, or tunnel; to be recovered as hereinafter provided.

If it shall be provided by any act, that the expenses of obtaining and carrying it into execution, shall be paid by the proprietors, and they neglect so to do, the same may be levied by distress, or the commissioner may take possession of the allotments, and receive the rents, till satisfied.

§ 29. And whereas it may often be provided by such act that the expenses of obtaining the same, and also the expenses of carrying the same into execution, shall be paid in proportion by the proprietors of lands or grounds to whom any allotments shall be made, it is enacted, that in such case, when any such person, except the person thereby exempted from payment of any such expenses shall refuse or neglect to pay their proportion thereof, or to pay the expenses attending the inclosing and fencing of any such allotments as upon the neglect or refusal of the proprietors shall be inclosed and fenced by such commissioner, &c. as hereinafter mentioned, at the respective days and times to be appointed for payment thereof; it shall be lawful for such commissioner, &c. by any warrant under their hands and seals directed to any person or persons whomsoever, to cause the said costs, charges, and expenses and sums of money respectively to be levied by distress and sale of the goods and chattels of the person or persons so making default in payment as aforesaid, his, her, or their husbands, guardians, trustees, committees, or attornies, wheresoever the same shall be found, rendering the overplus (if any) on demand, to the owner of such goods, the reasonable charges of such warrant, distress, and sale being first deducted, together with the interest after the rate of *5l. per cent.* to be computed on such share or proportion from the time the same shall be directed to be paid by such commissioner, &c. as aforesaid; or otherwise it shall be lawful

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for such commissioner, &c. or any person authorized by them, to enter upon and take possession of the premises so to be allotted to such person refusing or neglecting to pay as aforesaid, and to take the rents and profits thereof, until thereby, therewith, or otherwise, the share or proportion and the said costs and charges so ordered and directed to be paid by such person as aforesaid, and all interest thereon to be computed from the time the same shall by such commissioner, &c. be directed to be paid as aforesaid, and also all costs, charges, and expences occasioned by such entry upon and perception of the rents and profits of the said premises shall be fully paid.

Husbands, &c. may charge allotments with such sums as the commissioners shall adjudge necessary to defray the aforesaid expenses; and if persons in possession liable to a share thereof, or enabled to charge the lands with the same advance the money, the commissioners may mortgage the lands to them for reimbursement.

§ 30. In such case, it shall be lawful for the husbands, guardians, trustees, committees, or attornies of any of the owners or proprietors of such allotment or exchanged lands, being under coverture, minors, lunatics, beyond the seas, or under any other disability, and for any of the said owners or proprietors being tenants in tail, or for life or lives, or years determinable on a life or lives, or on any other contingency, or otherwise interested as aforesaid, (except the rector or vicar of such parish) to charge such allotments or exchanged lands and premises with such sum or sums of money as such commissioner or commissioners shall by his or their award, or by writing uhder his or their hands, either before or after the execution of such award, adjudge necessary to pay and defray the said respective shares of the charges and expenses incident to the obtaining of such act, and carrying the same into execution, and of charging the said lands as aforesaid, so that the same shall not exceed *5l.* for every acre of such allotments or exchanged lands, and to grant, mortgage, surrender, lease, or demise, or otherwise subject the lands, tenements, and hereditaments so to be charged, unto such persons who shall advance and lend the same respectively, their executors, administrators, or assigns, for any term or number of years; or in case any person in possession, who shall be liable to and charged with a share of the expenses as aforesaid, or enabled by this or any such act to charge such lands with the same, shall choose to advance and discharge such sum or sums of money, then it shall be lawful for the said commissioner, &c. by any deed or writing under their hands and seals, to be attested by two credible witnesses, in like manner to grant, mortgage, surrender, lease, demise, or otherwise subject the said lands, tenements, and hereditaments to such person or persons respectively discharging the same, their executors, administrators, and assigns, for any term of years, for the payment of such money so advanced by them, with interest, to commence on the termination of his, her or their right in the premises; so that every such grant, mortgage, surrender, lease, or demise be made with a proviso on condition to cease, or with an express trust to be surrendered or re-assigned, when such sum or sums thereby to be secured shall be fully paid; and also with a covenant to pay and keep down the interest, so that no person or persons afterwards becoming possessed of or entitled to any such lands, tenements, or hereditaments shall be liable to pay any further arrear of interest than for six calendar months preceding the time when the title to such possession shall have commenced; and every such charge, &c. shall be effectual in the law for the purposes thereby intended.

§ 31. Whereas in such cases as aforesaid, where provision may be made in any such act for charging the expences of passing such act, or of executing the powers thereof, or of fencing the respective allotments on the several proprietors thereof, it may be more convenient for the feoffees or trustees of any charity lands or school lands to have lands deducted from the respective allotments to be made for such charity lands or school lands, for paying the proportionable share in respect of such allotments of such expences respectively, than to raise money on mortgage for those purposes, it is therefore enacted, that any such commissioner, &c. if they shall judge it expedient, may deduct from the respective allotments to be made to such feoffees or trustees, so much land as shall in the judgment of such commissioner, &c. be equal in value to their respective proportions of the said expences, and may allot, assign, and award the same to such person or persons as such commissioner, &c. shall think proper, and who will undertake to defray, and shall defray, all such expences.

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Commissioners may deduct from allotments for charity or school lands, what shall be deemed equal to the proportionable share of the expences of passing and executing any act, and allot the same to such persons as will undertake to pay it.

§ 32. And in case it shall be provided by any such act that the expences thereof shall be paid by sale of any part of the land so to be inclosed, the said commissioner, &c. shall mark and set out such part or parts of the said waste or commonable lands as in his or their opinion will by sale thereof raise a sum sufficient to pay all such charges and expences as may by any such act be directed to be paid out of the same; and the said commissioner, &c. shall sell such part or parts of the said lands to any person for the best price that can be gotten for the same, by private contract, or by public auction or auctions, of which six weeks' previous notice shall be given, in such manner as shall by any such act be directed with respect to the other notices thereby required; and the person or persons so purchasing the same shall immediately pay (by way of deposit) into the hands of the said commissioner, &c., or such person or persons as they shall direct and appoint, one-tenth part of the purchase money, and pay the remainder thereof within three calendar months next after, or at such other time as the said commissioner, &c. shall appoint, and in default thereof the money so deposited shall be forfeited, and shall be applied in carrying such act into execution; and the said allotment or allotments for which the whole of such purchase money shall not have been so paid, or for which there shall be no bidding at such auction, shall be again put up to sale and sold as aforesaid for the best price or prices that can be gotten for the same, or be sold by the said commissioner, &c. by private contract, for not less than the remaining nine-tenths of the price or respective prices for which the same was or were respectively before sold, or the amount of one bidding above the sum or respective sums at which the same was or were respectively put up in the said former auction; and every allotment for which the full purchase money shall be paid shall immediately thereupon be absolutely discharged from all common and other right thereon or therein, and be vested in fee-simple in, and be inclosed and thenceforth held in severalty by such purchasers thereof respectively, as their absolute property, and shall be allotted accordingly by the said commissioners, &c.; and the said purchase money shall be applied in defraying such expences as may be in any such act directed to be discharged by the sale of such land.

If it shall be provided by any act that the expences of obtaining and carrying it into execution shall be paid by sale of part of the lands, the commissioners shall set out and sell such part as they think will raise a sufficient sum, and the purchasers shall immediately deposit a part of the purchase money, which shall be forfeited; if the remainder be not duly paid.

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Commissioners may summon witnesses, who shall be subject to penalty for neglect.

§ 33. It shall be lawful for the said commissioner, &c. from time to time, as he or they shall see occasion, by any writing under their hand, to summon any person to appear before them at any time and place in such writing to be appointed, to testify the truth touching the matter in dispute between any proprietors or interested persons, or otherwise relating to the execution of the powers given by this or any such act, and to cause a copy of such writing to be served on such person, or to be left at his usual or last place of abode; and every person so summoned, who shall not appear before the said commissioner, &c. pursuant to such summons (without assigning some reasonable excuse for not appearing) or appearing, shall refuse to be examined on oath or affirmation, (such person having been paid or tendered the reasonable charges of attendance,) and being thereof convicted before one justice of the county or district in which such lands are situated, upon information thereof upon oath before any such justice, shall for every such neglect or refusal forfeit not exceeding 10*l.* nor less than 5*l.*, as such justice or justices shall order.

No witness obliged to travel beyond 8 miles.

§ 34. Provided, that no witness summoned to attend such commissioner, &c. shall be obliged to travel above eight miles from the boundary of the parish, manor, or district by any such act intended to be inclosed.

Commissioners shall draw up an award, containing sundry particulars, which shall be read and executed at a meeting of the proprietors, and proclaimed the next *Sunday* in the parish church, and then considered as complete.

§ 35. As soon as conveniently may be after the allotment of the said lands, pursuant to the directions of this or any such act, the said commissioner, &c. shall draw up or cause to be drawn up an award in writing, which shall express the quantity of acres, roods, and perches in statute measure, contained in the said lands, and the quantity of every part and parcel thereof which shall be so allotted, assigned, or exchanged, and the situations and descriptions of the same respectively, and shall also contain a description of the roads, ways, footpaths, watercourses, watering places, quarries, bridges, fences, and land marks set out and appointed by the said commissioner, &c. respectively as aforesaid, and all such other rules, orders, agreements, regulations, directions, and determinations, as the said commissioner, &c. shall think proper to the parties; which award shall be fairly ingrossed or written on parchment, and shall be read and executed, by the commissioner, &c. in the presence of the proprietors who may attend at a special general meeting called for that purpose, of which ten days' notice at least shall be given in some paper to be named in such act, and circulating in the county, and which execution shall be proclaimed the next *Sunday* in the parish church where such lands shall be, from the time of which proclamation only and not before such award shall be considered as complete; and shall, within twelve calendar months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of H. M.'s courts of record at *Westminster*, or with the clerk of the peace for the county in which such lands shall be situated, to the end that recourse may be had thereto by any person interested therein, for the perusal whereof no more than 1*s.* shall be paid; and a copy of the said award, or any part thereof, signed by the proper officer of such court, or by the clerk of the peace for such county or his deputy, purporting the same to be a true copy, shall from time to time be made and delivered by such officer or clerk of the peace for the time being as aforesaid to any person requesting the same,

Award to be inrolled in a court of record at Westminster, or with the clerk of the peace of the county, and may be inspected, and copies obtained for a certain sum.

for which no more shall be paid than 2*d.* for every sheet of 72 words; and the said award, and each copy of it or any part thereof, signed as aforesaid, shall at all times be admitted in all courts whatever as legal evidence; and the said award or instrument, and the several allotments, partitions, regulations, agreements, exchanges, orders, directions, determinations, and all other matters therein mentioned, shall, to all intents and purposes, be binding and conclusive, (except where some provision to the contrary is herein or shall be by any such act contained,) upon the said proprietors, and all parties concerned or interested in the same, or in any lands, grounds, or premises aforesaid; and also that the said respective commissioners, if they think it necessary, shall draw or cause to be drawn on parchment or vellum such maps or plans of the said lands, the better to describe the several new allotments or divisions to be made, and premises that shall be exchanged by virtue of this act, and which shall express the quantity of each allotment in acres, roods, and perches, together with the names of the proprietors at the time of such division and allotment; which maps and plans shall be annexed to and inrolled with the said respective award, and shall be deemed part of the said award.

41 G.3. (U.K.) c.109.

Award and copies to be legal evidence, and award to be binding on all parties interested.

Commissioners may form maps of the grounds, which shall be annexed to the award, and deemed part thereof.

§ 36. Such commissioner, &c. shall enter in a book to be provided for that purpose a particular account of all sums received from the proprietors or others during the progress of the inclosure; and also of all the charges, expences, and disbursements which shall accrue or be made by virtue of any such act, and in carrying the same into execution; such book of accounts to be kept at the clerk's office open at all seasonable times during the progress of the inclosure and till the accounts are finally settled, for the inspection of any of the proprietors, without fee; and if any such commissioner or commissioners, or their clerk, shall neglect to provide and keep such book, or refuse the inspection thereof to any of the proprietors at seasonable times in manner before mentioned, and shall be convicted thereof, upon the oath of a credible witness not interested in the intended division and inclosure, before any justice of the county in which the lands to be inclosed shall be situate, or of such other county or place where such commissioner or clerk so offending shall be or reside, every such commissioner or clerk so causing such neglect or refusal, and convicted as aforesaid, shall forfeit for every such offence not exceeding 10*l.* nor less than 5*l.*, to be levied, recovered, and applied in the same manner as other penalties are by this act directed.

Commissioners shall keep an account of all monies received and disbursed, which may be inspected at their clerk's office gratis.

Penalty for not keeping such account, or for refusing the inspection thereof.

§ 37. All monies to be raised by virtue of any such act shall, from time to time, as often as the same shall amount to the sum of 50*l.*, be deposited in the hands of some banker, or such person as shall be approved by a majority in value of the proprietors present at the first meeting of such commissioner, &c.; in the notice of which meeting shall be expressed the intention of then appointing such banker or such other person; and no such monies deposited or paid into the hands of such banker, or other persons to be appointed as aforesaid, shall be issued or paid by them without an order in writing under the hands of such commissioner, &c. specifying the person or persons to whom the same are respectively payable, and the consideration for which the same are due; and the balance, if any, upon the final settlement of accounts shall be

Monies raised under any act shall be deposited as may be approved by a majority in value of the proprietors, and not issued without an order from the commissioners.

41 G. 3. (U.K.) c. 109.

immediately repaid to the land owners in proportion to the sums respectively paid by them.

The rector or vicar, with the consent of the bishop of the diocese, and of the patron of the living, may lease allotments for 21 years, upon certain conditions.

§ 38. It shall be lawful for the rector or vicar for the time being of any parish wherein the lands and grounds intended to be inclosed shall be situate, by indenture or indentures under his hand and seal, with the consent and approbation of the bishop and patron, to demise all or any part or parts of the allotment or allotments to be set out and allotted to any such rector or vicar, by virtue of any such act, to any person or persons for any term not exceeding 21 years, to commence within 12 calendar months next after the executing the award; so that the rents for the same shall be thereby reserved to the rector or vicar for the time being by four equal quarterly payments in every year; and so that there be thereby also reserved and made payable to such rector or vicar the most improved rent that can reasonably be had or gotten for the same, without taking any fine, foregift, premium, sum of money, or other consideration, for making or granting any such lease or demise; and so that no such lessee by any such demise be made dispunishable for waste, by any express words to be therein contained; and so that there be inserted in every such lease power of re-entry on non-payment of the rent or rents thereby reserved within a reasonable time to be therein limited after the same shall become due; and so that a counterpart of such lease be duly executed by the lessee or lessees; and every such lease shall be valid. See stat. 1 & 2 *G.* 4. *c.* 23. § 4. *post.* p. 22.

Recovery and application of penalties.

§ 39. All penalties and forfeitures imposed by this or any such act, or which shall be imposed by such commissioner, &c. by virtue of this or any such act, shall be levied and recovered before any one justice for the county in which the lands to be inclosed shall be situate, and residing near any such parish, and not interested in the matter in question; for which purpose it shall be lawful for any such justice, upon complaint, to summon the party accused and the witnesses on both sides; and upon the appearance or contempt of the party accused, to examine such witnesses upon oath, and upon such evidence to give judgment accordingly, and to condemn the party accused (proof of the accusation being made by one or more witness or witnesses as aforesaid), in such penalties and forfeitures as the offenders shall have incurred, and to levy such penalties, &c. by distress and sale, with reasonable costs; all which penalties, &c. the application whereof is not particularly directed by any such act, or this act, shall, when the same shall be levied, be paid and applied to such purposes as such commissioner, &c. by any writing or writings under his or their hands, or by his or their award, shall appoint.

Saving of the rights of lords of manors.

§ 40. Nothing in such act contained shall prejudice the right, &c. of any lord or lady of any manor or lordship, or reputed manor or lordship (except the interest and other property as is or are intended to be barred by such act).

General saving.

§ 41. And a general saving of the rights of the crown.

Two justices may take affidavits of the notices required having been given, &c. in the forms in the

§ 42. It shall be lawful for any two or more justices to take affidavits on oath or affirmation of the notices required for such bills having been given, of the consent of the parties interested, of the allegations contained in the preambles thereof, and of the quantity of the land to be inclosed; and such affidavits shall be in the forms contained in the schedule annexed, as near as the circumstances

of the case will admit; and such affidavits shall not be subject to any stamp duties. 41 G. 3. (U. K.) c. 109.

schedule, without stamps.

§ 43. If any person shall in any examination, affidavit, deposition, or affirmation, taken in pursuance of this act before such justice or justices, or such commissioner or commissioners, knowingly and wilfully swear or affirm any matter or thing which shall be false or untrue, he shall, on conviction, be deemed guilty of perjury, and suffer the penalties of wilful and corrupt perjury. Persons forswearing themselves to be deemed guilty of perjury.

§ 44. Provided, that all the powers, &c. of this act shall be only so far binding in each particular case, as they or any of them shall not be otherwise provided and enacted in any such act hereafter to be passed as aforesaid. Powers hereof how far binding.

By stat. 1 & 2 *G.* 4. *c.* 23. intituled "*An act to amend the law respecting the inclosing of open fields, pastures, moors, commons, and waste lands*, in England," § 1. after reciting that whereas great inconveniences have arisen to landlords and other persons, owners of allotments allotted and set out to them by the commissioner or commissioners under or by virtue of several acts already passed, for dividing, allotting, and inclosing of open and uninclosed fields, pastures, moors, commons, and waste lands, in *England*, by reason that such landlords and other persons, owners of alotments as aforesaid, cannot, *before the execution and perfecting of the award or awards by such acts directed to be made by such commissioner or commissioners*, distrain for the rent in arrear or unpaid for or in respect of such allotment or allotments; or support an action of trespass for any damage or injury done to such allotment or allotments, or an action of ejectment to recover the possession of such allotment or allotments, in consequence of the freehold or legal seisin thereof respectively not being vested in such landlords and other persons, owners of such allotment or allotments, by the award or awards of such commissioner or commissioners as aforesaid: For remedy whereof, it is enacted, that from and after the passing of this act, [19th *April*, 1821,] "it shall and may be lawful to and for all and every person and persons, to whom any allotment or allotments of land has or have been set out or allotted, or which shall or may hereafter be set out or allotted, and to whom the possession of such allotment or allotments hath been already given, by virtue of any order or direction, orders or directions, or to whom the possession thereof shall hereafter be given, by virtue of any order or direction, orders or directions in writing, in the form and specified in the schedule hereto annexed, (see *post*, p. 29.) and signed by the commissioner or commissioners acting under or by virtue of any act or acts of parliament now or hereafter to be passed for dividing, allotting, and inclosing any open fields, pastures, commons, moors, and waste lands in *England*, and who shall have demised the same, or any part thereof, to any tenant or servant, or for their, his, or her bailiff or agent, bailiffs or agents, or any person or persons by them, him, or her authorized and employed for that purpose, to enter into and upon any such allotment or allotments, and to seize and distrain any goods, chattels, or effects which may be in or upon such allotment or allotments, or in or upon any other lands, tenements, or hereditaments, held, occupied, or enjoyed by the tenant or occupier of such allotment or allotments along and together with any such allotment or allotments, for any rent that may be in arrear and un-

1 & 2 G. 4. c. 23

Landlords, or persons acting under their orders, may enter upon land allotted, and seize and distrain for rent, notwithstanding the commissioners' award shall not be executed.

1 & 2 G.4.c.23. paid for all or any part of such allotment or allotments, and either alone or together with any such allotment or allotments, and any other lands, tenements, and hereditaments, held, occupied, or enjoyed therewith, notwithstanding the award or awards of the commissioner or commissioners appointed in or named by or by virtue of any such act or acts so made and passed, or to be hereafter made and passed, shall not be executed and perfected by such commissioner or commissioners, by virtue or in pursuance of any such act or acts of parliament.

Actions at law may also be brought.

§ 2. It shall be lawful for all and every person or persons, to whom any such allotment or allotments is or are already set out or allotted, or which shall or may be hereafter set out or allotted, and to whom such possession as aforesaid hath been already given, by virtue of any order or direction, orders or directions, or the possession whereof shall hereafter be given to such person or persons by virtue of any order or direction, orders or directions in writing, in the form specified in the said schedule as aforesaid, and signed by such commissioner or commissioners as aforesaid, and to his, her, or their tenants, stewards, bailiffs, agents, or servants, to commence, prosecute, and maintain any action or suit at law, for any injury or damage that may be done or committed by any person or persons whomsoever, to the ground, soil, or herbage of any such allotment or allotments, or to the walls, hedges, fences, ditches, gates, posts, rails, stills, cloughs, bridges, or tunnels, already erected or to be erected in or upon any such allotment or allotments, and to bring, maintain, and prosecute any action or actions of ejectment, for recovering the possession of any such allotment or allotments, or any part or parts thereof, from any person or persons whomsoever, notwithstanding the award or awards of the commissioner or commissioners appointed in or named by or by virtue of any such act or acts now made and passed, or to be hereafter made and passed, shall not be executed and perfected by such commissioner or commissioners, by virtue or in pursuance of any such act or acts of parliament; any thing in any act or acts, or any construction of or implication from any act or acts, or any law, usage, or custom to the contrary in anywise notwithstanding.

Act not to affect right of persons to appeal against award of commissioners.

§ 3. Nothing in this act contained shall prevent or be construed to prevent or take away the right of any person or persons, bodies politic or corporate, and his, her, or their heirs, successors, and assigns, to appeal against the award or awards, order or directions of any such commissioner or commissioners, when made and executed, or the right of possession to any such allotment or allotments, which may be affected by the judgment of the court or such appeal; or to prevent or obstruct, or in anywise lessen or prejudice, any alteration or alterations to be made, ordered, or directed by any such commissioner or commissioners as aforesaid, for or in respect of any such allotment or allotments, in and by his or their award or awards, to be made and executed by virtue or in pursuance of any such act or acts of parliament as aforesaid.

Where leases granted under 41 G.3. (U.K.) c.109. become void before the

§ 4. Whenever any lease or leases to be granted by any rector, vicar, or other incumbent, under the powers or provisions of an act passed in the 41st year of the reign of his late majesty king *George* the third, intituled, *An act for consolidating in one act*

certain provisions usually inserted in acts of inclosure, and for facilitating the mode of proving the several facts usually required on the passing of such acts, shall by any means become forfeited or void, or be surrendered before the expiration, by effluction of time, of the term or terms thereby granted, then and in such case, and as often as the same shall so happen, it shall and may be lawful for the rector, vicar, or other incumbent for the time being of the same rectory, vicarage, or parish, by and with the previous consent of the ordinary and patron, to grant a new lease of the lands so demised, for such term or terms of years as shall, at the time or times of such avoidance, be then to come and unexpired of the original term or terms granted by such original lease or leases, subject nevertheless to the provisions and conditions contained in such original lease or leases, and then remaining unperformed and capable of having effect. See 3 *Burn*, 19, 20.

1 & 2 G. 4. c. 23.

expiration of their term, incumbents may grant new leases.

§ 5. The powers, authorities, and provisions in this act contained shall be only so far effective and binding, in each particular case, as they or any of them shall not be otherwise provided and enacted in any act hereafter to be passed, for dividing, allotting, and inclosing any open fields, pastures, commons, moors, or waste lands in *England*.

Powers of this act only binding in cases where not otherwise provided.

R. v. *Justices of Derbyshire*, 4 *T. R.* 488. By an inclosing act, an appeal was given to the next sessions within six calendar months after the cause of complaint, at which said sessions the justices were authorised and required to hear and determine the matter of such appeal, and make such order as to them should seem reasonable; the appellant moved the court of sessions (in due time) to receive and respite his appeal to the next sessions, which was refused, because the following sessions would not happen before the expiration of six months after the cause of complaint; the court of K. B. had no doubt but that the clause was compulsory on the justices to *receive* the appeal, but not to *respite* it, and therefore refused to grant a *mandamus* to the justices to receive it.

R. v. *the Justices of Wiltshire*, 13 *East.* 352. By a local act, 49 *G.* 3. *c.* 110., for inclosing lands in the parish of *Stockton* in *Wiltshire*, it is provided, that "If any person shall think himself aggrieved by any thing done in pursuance of the general inclosure act or of this act, &c. he may appeal to any general quarter sessions of the peace which shall be holden for the said county of *Wilts*, *within four calendar months next* after the cause of complaint shall have arisen, on giving notice, &c. and the justices at the said general quarter sessions are hereby required to hear and determine the matter of every such appeal, and to make such order and award such costs as to them in their discretion shall seem reasonable." — A motion was made on a former day in this term for a *mandamus* to the defendants to enter continuances, and proceed to hear and determine at the next sessions, an appeal which had been lodged by a party grieved by the inclosure at the last *October* sessions held at *Marlborough*, being within the four months, as he stated, after the cause of complaint had arisen. But the justices having, for the more convenient consideration of the case, adjourned the appeal to the then next *January* sessions held at *Devizes*, the justices there assembled considered that the time of appeal was expired, and that they could not take cogni-

sance of it, and therefore refused to proceed upon it. — Lord *Ellenborough* C. J. then said, upon granting a rule to shew cause, that there was a power necessarily incident to the sessions to adjourn the consideration of an appeal properly lodged before them. — On shewing cause it was stated that the appeal was adjourned from the *October* sessions upon the application of the appellant himself, who was not then ready to enter into it on account of the absence of a material witness; that the grievance, if any, existed as early as *March* last, the grievance stated by the appellant being, that he had not so large an allotment as he ought to have had, and that and other allotments having been made and staked out from the 7th to the 10th of *March*, and notice thereof given to the appellant, who immediately took possession and cropped the land; but that on the 6th of *July* an alteration in the allotment was made by the commissioners with the express consent of the appellant, whereby an exchange was made of about a quarter of an acre out of 200 acres with another person; they therefore contended that the supposed grievance existing so early as in *March*, the party was out of time to appeal to the *October* sessions; they also contended that the appellant was estopped from appealing at all against the sufficiency of his allotment after taking possession of and cropping the land, by which the quality of it was deteriorated. — Lord *Ellenborough* C. J. I hold without any doubt that the court who are to try the appeal have an incidental authority to adjourn it when once properly lodged, if it be necessary for the advancement or convenience of justice, and that the sessions are to judge of the proper occasion for doing so. But the act of the party himself in preferring his appeal must be within the limited time. — Counsel having been heard in support of the rule, Lord *Ellenborough* C. J. said, The grievance complained of being the insufficiency of the whole allotment which was made and staked out so long ago as *March*, and of which the appellant then had notice, and actually took possession of and enjoyed it, the grievance, if any, arose in *March*, and therefore he was too late to appeal in *October*. The mere staking out the ground by the commissioners might not be a grievance, for that might be done behind the party's back, and without notice to him; but here he took possession and cropped the land, which was down land, and could not afterwards be restored to its original state; that makes an end of the question, for he was then clearly out of time in his appeal. R. D.

Where commissioners, by an inclosure act, were empowered (*inter alia*) to make roads and to defray the expense by a rate on the several proprietors, and they executed their award as to the allotments before the roads were com-

Haggerston v. *Dugmore and others*, *M.* 1817. 1 *B. & A.* 82. The defendants were commissioners under an inclosure act, and had destrained upon plaintiff's goods for a rate imposed by them to defray the expenses of completing the roads; and the whole question turned upon the legality of that rate. The act of parliament passed in 1809; the commissioners made their award in 1811, the roads at that time not being completed; and before the making of the award, the expenses attending the act were settled and adjusted at a certain sum, including therein a sum paid into the hands of the surveyor for completing the roads (but which was admitted to be wholly inadequate for that purpose). The present rate was made in 1815, four years after the execution of the award. At the trial before *Abbott* J. at *Cambridge Summ. Ass.* 1817, it was contended that the authority of the commissioners ceased on the

execution of the award, and that they had no power to make the rate in question. The learned judge, however, thought that the rate was legally imposed, and nonsuited the plaintiff. On motion to set aside the nonsuit, the Court of K. B. were unanimous in refusing a rule. And *per Holroyd* J. The power of the commissioners must, from the reason of the thing, continue till they have fully executed the duty imposed upon them by the act; till the roads have been completed, they have not fully discharged their duty, and therefore their authority is not finally executed. The argument (if of any weight) rather goes to affect the award of the commissioners, than to prove that they have executed their authority. Rule refused.

pleted, or sufficient funds were raised for that purpose: held that they might afterwards make a rate to defray the expense of completing the roads.

Rex v. *Just. of Cumberland, M.* 3. *G.* 4. 1 *B. & C.* 64. By an act passed in the 50 *G.* 3. for inclosing lands in the parish of *Gosforth*, in the county of *Cumberland*, and in which the general inclosure act (41 *G.* 3. *c.* 109.) was recited. "It was enacted, that once at least, in every year, during the execution of that act, (such year be computed from the day of the passing thereof,) the commissioners should, and they were thereby required to make a true and just statement, or account of all monies by them received and expended, or due to them for their own trouble and expenses in the execution of that or the recited act; and such statement and account when so made, together with the vouchers relating thereto, should be by them laid before one of H. M.'s justices of the peace for the said county of *Cumberland*, (not interested in the said division and inclosure,) to be by him examined and balanced: and such balance should be by such justice stated in the book of accounts to be kept in the office of the clerk of the commissiocnrs; and no charge or item in such accounts should be binding to the parties concerned, or valid in law, unless the same should have been duly allowed by such justice." And by a subsequent clause it was enacted, that "if any person should think himself aggrieved by any thing done in pursuance of that act, or the recited act, (other than and except such determinations as were by that or the said recited act declared to be binding, final, and conclusive; and, except in such cases, where an issue at law was thereinbefore authorised to be tried,) then he might appeal to the general quarter sessions of the peace, &c. &c." In pursuance of the first of these clauses, the commissioners on the 18th of *May*, 1822, made out an account of monies expended by them in the execution of the act, and laid it together with all necessary vouchers, before one of H. M.'s justices of the peace for the county, (not interested in the inclosure,) by whom it was examined, balanced, and allowed. At the *Midsummer* sessions certain persons, interested in the inclosure, appealed against that allowance. It was then objected for the commissioners, that the court of quarter sessions had no jurisdiction, but the justices, there assembled, received and heard the appeal, and made an order thereupon, disallowing several items included in the account as it was originally allowed. The *Solicitor General* now moved for a writ of *certiorari*, to remove that order of sessions into this court for the purpose of having it quashed, and contended that the order ought not to have been made; for although the clause, relating to the accounts of the commissioners, does not expressly state that

A clause in a private inclosure act, declaring that no item or charge in the accounts of the commissioners shall be binding to the parties concerned or valid in law, unless the same shall have been duly allowed by a justice of peace in the manner therein pointed out, does not take away an appeal given by a subsequent clause "to the party grieved by any thing done in pursuance of that or the General Inclosure Act, (other than and except such determinations as were by that or the General Inclosure Act declared to be binding, final, and conclusive,") the allowance of the accounts by a justice not falling within this exception.

they are to be binding and conclusive, when balanced and allowed in the manner there pointed out, yet that must be inferred, for to say that the accounts shall not be binding until allowed, is in effect saying, that when allowed they shall be binding. Then the clause giving an appeal in certain cases, excepts those determinations which were by that act, or the general inclosure act, (therein recited,) declared to be binding, final, and conclusive; and there is no clause in the whole of this act to which that exception can apply, unless it be held applicable to the allowance of the accounts by a single justice, which argument was much relied upon by Lord *Ellenborough*, in *The King* v. *The Commissioners of Dean Inclosure*, 2 *M.* & *S.* 80. Here the act appoints a single justice as the tribunal before which the accounts are to be settled; his decision is therefore conclusive, according to *Boyfield* v. *Porter*, 13 *East*, 200.—*Abbott*, C. J. I think that we cannot by inference exclude the operation of the appeal clause of this act. There is no positive enactment that the allowance of the commissioners' accounts, by a single justice, shall be final and conclusive. Now it appears to me, that the words "binding, final, and conclusive," in the excepting part of the appeal clause, must be confined to those proceedings which are made binding, final, and conclusive, by some affirmative declaration in the statute. There is no such declaration as to the matter in question, and the whole argument, in support of the motion, is founded upon inference alone. I am therefore of opinion, that the justices at sessions had jurisdiction, and did right in hearing the appeal. — *Holroyd*, J. (*a*) If that which has been contended for were a necessary inference, there would be much weight in the Solicitor General's argument, but that is not by any means the case. It is true, the act in question excepts out of the appeal clause those determinations, which are by that act, or the general inclosure act therein recited, declared to be binding, final and conclusive; but the clause relating to the allowance of the accounts, contains no declaration that when allowed they shall be binding, final and conclusive. The words there used are, "no charge or item in such accounts shall be binding to the parties concerned, or valid in law, unless the same shall have been duly allowed." Now the utmost effect which can be given to those words appear to be this, that the allowance of the accounts, in the mode pointed out, shall be binding if not appealed from. — *Best* J. I think it quite clear that the appeal is not taken away in this case. The allowance of the accounts cannot be considered as a judicial decision of the justice, which disposes of the case of *Boyfield* v. *Porter*. In the case of *The King* v. *the Commissioners of Dean Inclosure*, which has been referred to, the enactment was that the "commissioners should order and finally direct" as to the matter in dispute: here the act says that no accounts shall be binding or valid unless allowed, which words cannot have the same operation as the other expression. The true meaning of them is, that the allowance shall be valid and binding unless overthrown by appeal. R. R.

(*a*) *Bayley* J. was in the bail court.

Respecting the breach of inclosures and other matters relative thereto, see Wood.

SCHEDULE to which the act 41 *G.* 3. *c.* 109. refers.

(A.)

A.

FORM OF AFFIDAVIT OF NOTICES.

A. B. of ——————————— maketh oath and saith [*or, being one of the people called* Quakers, upon his solemn affirmation, saith], that he did see a copy of the notice hereunto annexed affixed on the church door of the parish of ——————— ——————— in the county of ——————— [*or,* on the several church doors of the respective parishes of ——————— in the county of ———————. *or,* in the several counties of ——————— and ———————], on the several *Sundays* herein-after mentioned; *videlicet,* [*specifying the days on which the notices were affixed.*]

Signed *A. B.*

Sworn [*or,* solemnly affirmed] before us, two of his majesty's justices of the peace acting in and for the ——————— and subscribed in our presence, by the above-named *A. B.* this ——— day of ——— in the year ———
As witness our hands and seals.

(B.)

B.

FORM OF AFFIDAVIT OF CONSENT.

A. B. of ——————————— maketh oath and saith, [*or, being one of the people called* Quakers, upon his or her solemn affirmation, saith], that he [*or* she] believes himself [*or* herself] to be interested in the proposed inclosure of the ——————————— in the [*here describe the place, whether parish, hamlet, or place*], in the county of ——————————— by virtue of [*here set forth the interest of the deponent*]; [*or*], that he [*or* she] believes that *C. D.* of ——————— for whom he [*or* she] is guardian [*et cetera, as the case may be*], is interested, *et cetera;* and that he [*or* she] hath seen a copy of an act [*here set forth the title of this act,*] and also a copy of the bill intended to be presented to parliament, and hath subscribed his [*or* her] name, or hath set his [*or* her] mark to the same respectively, and doth consent to the said bill being passed into a law.

Signed or marked *A. B.*

Sworn [*or,* solemnly affirmed] before us, two of his majesty's justices of the peace, acting in and for the ——————— and subscribed in our presence, by the above-mentioned *A. B.* this ——— day of ——————— in the year ———————
As witness our hands and seals.

The same form may be applied *mutatis mutandis,* to the case of several persons whose interests are joint, or whose interests, though distinct, are of a similar nature.

C. (C.)

FORM OF AFFIDAVIT OF ALLEGATIONS OF THE BILL.

A. B. of —————————————— maketh oath and saith, [*or, being one of the people called* Quakers, upon his or her solemn affirmation, saith], that [*here set forth such of the several facts alleged in the preamble of the bill as are within the knowledge of the witness*], *or*, that he [*or* she] is informed and verily believes that [*here set forth such of the said facts as are within the belief of the witness.*]

Signed *A. B.*

Sworn [*or*, solemnly affirmed] before us, two of his majesty's justices of the peace, acting in and for the ———————— and subscribed in our presence, by the above-named *A. B.* this ——— day of ———— in the year ———
As witness our hands and seals.

D. (D.)

FORM OF AFFIDAVIT OF ADMEASUREMENT.

A. B. of —————————————— maketh oath and saith [*or, being one of the people called* Quakers, upon his solemn affirmation, saith], that he hath surveyed and admeasured the several ————————— lands in the parish or hamlet of ———— in the county of ———— [*or*, counties of ————], described in the bill intended to be presented to parliament, and signed by the deponent, by the name [*or* names] of ———————— and that the quantity of such lands amounts to ———————— and no more, according to such admeasurement, and the best of this deponent's judgment.

A. B.

Sworn [*or*, solemnly affirmed] before us, two of his majesty's justices of the peace, acting in and for the ———————— and subscribed in our presence, by the above-named *A. B.* this ——— day of ———— in the year ————
As witness our hands and seals.

Schedule to which the Act 1 & 2 *G.* 4. *c.* 23. refers.

I A. B. [or, *in case of two or more commissioners, we,* A. B. C. D. &c.] *the commissioner* [or, *commissioners*] *named and appointed in and by act of parliament lately made and passed, intituled* An Act [here insert the title of the act by which the commissioner or commissioners is or are appointed] *do hereby order and direct, permit and authorize* T. F. *or his* [*her* or *their*] *bailiff or agent, to take possession of all that allotment* [here describe the allotment or allotments by metes and bounds] *by me* [or *us*] *set out or allotted, and staked or marked out to and for him* [or *her* or *their*, as the case may be], *under and by virtue of the said act,*

and to cultivate and manage, or to let and demise the same allotment [or *allotments*] *to any tenant or tenants, as he* [or *as she* or *they*, as the case may be] *shall think proper: but nevertheless subject and without prejudice to any such order or orders, direction or directions, as I* [or *we*] *may think proper and expedient to make, in and by the award or awards to be hereafter executed by me* [or *us*], *so far as respects such allotment* [or *allotments*] *so set out and allotted, or staked and marked out to and for the said* T. F. *As witness my hand* [or *our hands*], *this* —— *day of* ——.

Witness, (*Signed*) A. B.

Indemnity.

[Stat. 5 *G.* 4. *c.* 6. (*a*)]

BY stat. 5 *G.* 4. *c.* 6. after reciting, "Whereas divers persons, who, on account of their offices, places, employments, or professions, or any other cause or occasion, ought to have taken and subscribed the oaths or assurance respectively appointed to be by such persons taken and subscribed in and by stat. 1 *G.* 1. st. 2. *c.* 13. or to have qualified themselves according to 12 *C.* 2. *c.* 23. and *c.* 24. the one, intituled *A grant of certain impositions upon beer, ale, and other liquors, for the increase of H. M.'s revenue, during his life;* and the other, intituled *An act for taking away the court of wards and liveries, and tenures in capite and by knights service, and purveyance, and for settling a revenue upon H. M. in lieu thereof;* or to have qualified themselves according to 13 *C.* 2. st. 2. *c.* 1. intituled *An act for the well-governing and regulating of corporations;* or to have qualified themselves according to 25 *C.* 2. st. 2. *c.* 1. or *c.* 2. intituled *An act for preventing the dangers which may happen from popish recusants, by receiving the sacrament of the Lord's supper, according to the usage of the Church of* England, *and making and subscribing the declaration against transubstantiation therein mentioned;* or according to 30 *C.* 2. st. 2. intituled *An act for the more effectual preserving the King's person and government, by disabling papists from sitting in either house of Parliament;* or according to 8 *G.* 1. *c.* 6. intituled *An act for granting the people called* Quakers *such forms of affirmation or declaration as may remove the difficulties which many of them lie under;* or according to 9 *G.* 2. *c.* 26. intituled *An act for indemnifying persons who have omitted to qualify them-*

5 G.4. c.6. Persons who have omitted to qualify themselves agreeably to 1 G.1. st.2. c.13. 12 C.2. c.23. 12 .2. c.24. 13 C.2. st.2. c.1. 25 C.2 st.2. c.2. 30 C.2. st.2. 8 G.1. c.6. 9 G.2. c.26.

(*a*) Date of royal assent, 16th *March*, 1824, intituled "An Act to indemnify such persons in the U. K. as have omitted to qualify themselves for offices and employments, and for extending the time limited for those purposes respectively, until the 25th *March*, 1825; to permit such persons in G. B. as have omitted to make and file affidavits of the execution of indentures of clerks to attornies and solicitors, to make and file the same on or before the first day of *Hilary* term, 1825; and to allow persons to make and file such affidavits, although the persons whom they served shall have neglected to take out their annual certificates.

5 G. 4. c. 6. *selves for offices within the time limited by law, and for allowing further time for that purpose; and for amending so much of an act passed in the second year of the reign of His present Majesty, as requires persons to qualify themselves for offices before the end of the next term or quarter sessions; and also for enlarging the time limited by law for making and subscribing the declaration against transubstantiation, and for allowing a further time for enrolment of deeds and wills made by papists; and for relief of protestant purchasers, devisees, and lessees;* or according to 18 *G.* 2. *c.* 20. in-
18 G. 2. c. 20. tituled *An act to amend and render more effectual an act passed in the fifth year of His present Majesty's reign, intituled 'An act for the further qualification of justices of the peace;'* or according
and 6 G. 3. c. 53. to 6 *G.* 3. *c.* 53. intituled *An act for altering the oath of abjuration, and the assurance; and for amending so much of an act made in the seventh year of the reign of Her late Majesty Queen* Anne, *intituled 'An act for the improvement of the union of the two kingdoms,' as, after the time therein limited, requires the delivery of certain lists and copies therein mentioned to persons indicted of high treason or misprision of treason;* have, through ignorance, of the law, absence, or some unavoidable accident, omitted to take and subscribe the oaths and assurance, and make and subscribe the declaration required by law or otherwise to qualify themselves as aforesaid, within such time and in such manner as in and by the said acts respectively, or by any other act of parliament in that behalf made, is required, whereby they have incurred, or may be in danger of incurring, divers penalties and disabilities: For quieting the minds of H. M.'s subjects, and for preventing any inconvenience that might otherwise happen by means of such omissions;
before the passing of this Act; it is enacted that all and every person or persons who, at or before the passing of this act, hath or shall have omitted to take and subscribe the oaths and declarations, or to receive the sacrament of the Lord's supper, or otherwise to qualify him, her or themselves, within such time and in such manner as in and by the said acts, or any of them, or by any other act of parliament in that behalf made, is required; and who, after accepting any such office, place, or employment, or undertaking any profession or thing on account of which such qualifications ought to have been had, and is required, before the passing of this act, hath or have taken and subscribed the said oaths, or made the declarations required by law, and also received the sacrament of the Lord's supper according
and who shall on or before March 25, 1825, qualify themselves. to the usage of the church of *England;* or who, on or before the 25th *March,* 1825, shall take and subscribe the oaths, declarations, and assurance respectively, in such cases wherein by law the said oaths, declarations, and assurance ought to have been taken and subscribed in such manner and form, and at or in such place or places, as are appointed in and by the said act made in the stat. 1 *G.* 1. st. 2. *c.* 13. or by any other act or acts of parliament in that behalf made and provided; and also hath or have received, or shall, on or before the said 25th *March,* 1825, receive the sacrament of the Lord's supper according to the usage of the church of *England* in such cases wherein the said sacrament ought to have been received, and hath or ought to have made and subscribed, or shall, on or before the said 25th *March,* 1825, make and subscribe the said declaration against transubstantiation; and also hath or have made and subscribed, or shall, on or before the said 25th *March,*

1825, make and subscribe the said declaration in the said statute, 30 *Car.* 2. st. 2. in such cases wherein the said declaration ought to have been made and subscribed, or to take and subscribe the oath directed by the said stat. 18 *G.* 2. *c.* 20. in such cases wherein the said oath ought to have been taken and subscribed in such manner as by the said act is directed, shall be and are hereby indemnified, freed, and discharged from and against all penalties, forfeitures, incapacities, and disabilities incurred or to be incurred for or by reason of any neglect or omission, previous to the passing of this act, of taking or subscribing the said oaths or assurance, or receiving the sacrament, or making or subscribing the said declaration, or taking or subscribing the said oath according to the above-mentioned acts or any of them, or any other act or acts; and such person or persons is and are and shall be fully and actually recapacitated and restored to the same state and condition as he, she, or they were in before such neglect or omission, and shall be deemed and adjudged to have duly qualified him, her, or themselves according to the above-mentioned acts and every of them; and that all elections of, and acts done or to be done by any such person or persons, or by authority derived from him, her, or them, are and shall be of the same force and validity as the same or any of them would have been if such person or persons respectively had taken the said oaths or assurance, and received the sacrament of the Lord's supper, and made and subscribed the said declarations, and taken and subscribed the said oath according to the directions of the said acts and every or any of them; and that the qualification of such person or persons qualifying themselves in manner and within the time appointed by this act, shall be to all intents and purposes as effectual as if such person or persons had respectively taken the said oaths and assurance, and received the sacrament, and made and subscribed the said declaration, and taken and subscribed the said oath, within the time and in the manner appointed by the several acts before mentioned.

5 G. 4. c. 6.

shall be indemnified against forfeitures.

In the matter of Steavenson and others. *T.* 1823. 2 *B.* & *C.* 34. *Scarlett* moved for a *quo warranto* information against the mayor and four bailiffs of Berwick. These officers were elected on the 29th *Sept.* 1822, and were on the same day sworn and admitted into their respective offices. They all neglected to receive the sacrament and take the oath of allegiance, &c. within 6 months as required by stats. 25 *C.* 2. *c.* 2. 16 *G.* 2. *c.* 30. 1 *G.* 1. st. 2. *c.* 13. and 9 *G.* 2. *c.* 26. It will be urged that they are protected by the last annual indemnity act, viz. stat. 4 *G.* 4. *c.* 1. § 1. But that act passed on the 27th *Feb.* last, and only applies to those who "at or before the passing of the act," had incurred penalties or disabilities. These persons being elected on the 29th *Sept.* had not incurred any penalty or disability when the indemnity act passed, and cannot therefore be protected by it. *Campbell* shewed cause. The object of the indemnity act was to enlarge the time before allowed for receiving the sacrament, taking the oath &c. required of persons accepting certain offices and employments. The preamble of the statute certainly appears to be limited to such persons as had made default before the act passed, but is capable of receiving a larger construction. The title is material, to shew a different intention in the legislature; that is, "An act to indemnify such persons in the U. K. as have omitted to qualify themselves for

offices and employments, and for extending the time limited for those purposes respectively." The enacting part too extends to all those who, at or before the passing of the act, have or shall have omitted, &c. That certainly is future as well as past, and must extend to all that are in default before 25th *March*, 1824. *Per Cur.* There may perhaps be some obscurity in the words of this statute, but there is none in its title. It was manifestly the intention of the legislature to extend the time for taking the oaths and performing the other acts required of persons filling certain offices; and this being a remedial statute, we should so construe it as to give full effect to that intention. R. R.

5 G. 4. c. 6. Persons neglecting to qualify themselves agreeably to the Irish Act 2 Anne, and who shall qualify on or before March 25, 1825, shall be indemnified.

§ 2. And whereas several persons well affected to H. M.'s government, and to the united church of *England* and *Ireland*, have through ignorance of the law, neglected, or been, by sickness or other unavoidable causes, prevented from taking and subscribing the declaration, and from receiving the sacrament of the Lord's Supper, and delivering a certificate thereof, according to the directions of an act passed in the parliament of *Ireland* in 2 *Anne*, intituled *An Act to prevent the further growth of popery;* it is enacted, that all persons who have incurred any penalty or incapacity in the said recited act mentioned, by neglecting to qualify themselves according to the said act, shall be and are hereby indemnified, freed, and discharged from all incapacities, disabilities, penalties, and forfeitures incurred by reason of such omission or neglect as aforesaid; and that no act done by any of them, not yet avoided, shall be questioned or avoided by reason of such omission or neglect, but that all such acts shall be and are hereby declared to be as good and effectual, as if such persons respectively had taken and subscribed the said oath, and received the said sacrament, and delivered the certificate thereof, and made and repeated and subscribed the said declaration, at such time, place, and manner as in the said act is mentioned; any thing in the said act to the contrary notwithstanding; Provided always, that such person or persons do and shall take and subscribe the said oaths, and make, repeat, and subscribe the said declaration, in such manner and form, and in such place or places respectively, as are directed and appointed by the said last recited act, on or before 25th *March*, 1825.

Persons acting as trustees for roads, not having the qualification, indemnified.

§ 3. And whereas several persons have inadvertently, and without any corrupt or interested motives, acted as trustees in the execution of divers acts of parliament for the making or repairing of divers turnpike roads in *England*, without being possessed of the qualifications required respectively by the several acts of parliament under which such persons were appointed or elected to be trustees, and without having taken and subscribed the oaths or affirmations of their qualifications required by such acts respectively; it is enacted, that all persons who have incurred any penalty or incapacity mentioned in or inflicted by any act or acts of parliament for the making or repairing of any turnpike road or roads in *England*, by acting as trustees in the execution of any such act or acts without being possessed of the qualifications required by any such act or acts respectively, or by neglecting to take and subscribe any oath or affirmation required to qualify them as such trustees, according to any such act or acts respectively, are hereby indemnified, freed, and discharged from all

incapacities, disabilities, penalties, and forfeitures, incurred by reason of such acting, or of such omission or neglect as aforesaid; and that no act, matter, or thing, done by any of them in the execution of any such act or acts of parliament and not yet avoided, shall be questioned or avoided by reason of such acting, or of such omission or neglect as aforesaid, but that all such acts, &c. shall be as good and effectual to all intents and purposes whatsoever, as if such persons respectively had been duly qualified to act as such trustees, and had taken and subscribed such oaths or affirmations at such place and in such manner as is required respectively by the several acts under which such persons shall have acted as trustees as aforesaid; any thing in the said acts, or any of them, to the contrary thereof in anywise notwithstanding: Provided always, that such person or persons do and shall take and subscribe the oaths or affirmations of qualification required by the respective act or acts under which such person or persons shall act as a trustee or trustees, in such manner and form, and in such place or places respectively, as are directed and appointed by the said acts respectively, before any such person or persons shall act as such trustee or trustees at any time after the expiration of two calendar months next after the passing of this act, and see stat. 4 G.4. c.68. Vol. III. tit. Land Tax. 5 G.4. c.6.

§ 4. Provided, that this act, or any thing herein contained, shall not extend to indemnify any person against whom final judgment shall have been given in any action of debt, bill, plaint or information in any of H. M.'s courts of record, for any penalty incurred by having neglected to qualify himself within the time limited by law. Not to indemnify persons against whom final judgment is given.

§ 5. Provided, that nothing contained in this act shall extend to exempt any justice of the peace within *G. B.* from the penalties to which he is subject for acting as such without being possessed of the qualification required by the laws now in force. Not to exempt justices acting without legal qualification.

§ 6. And whereas the appointment of divers clerks of the peace, town clerks, and other public officers, and the admission of divers members and officers of cities, corporations, and borough towns in *G. B.* and *Ireland*, or the entries of such admissions in the court books, rolls or records of such cities, corporations, and borough towns, which by several acts of parliament are directed and required to be stamped, may not have been provided, or the same not stamped, or may have been lost or mislaid; it is enacted, that for the relief of such persons whose appointments and admissions, or the entries of whose admissions as aforesaid, may not have been provided, or not duly stamped, or where the same have been lost or mislaid, it shall be lawful to and for such persons in *G. B.* or *Ireland*, on or before 25th *March*, 1825, to provide or cause to be provided appointments and admissions, or entries of admissions as aforesaid, duly stamped; or in case where such appointments, &c. as aforesaid, have been made or provided, but have not been duly stamped, to produce such appointments, &c. to the commissioners appointed to inspect and manage the revenues of the stamp duties to be duly stamped; which such commissioners are hereby authorized, and required to duly stamp, on payment of the duties first payable, or to have been paid on such appointments, &c. as aforesaid, without any fine or forfeiture thereon; and in order to denote the said duties, the said commissioners are hereby authorized to use such stamps as In case of appointments and admissions being mislaid or not duly stamped, persons producing the same properly stamped before March 25, 1825, shall be confirmed and qualified to act as clerk, officer, or member of corporations, &c., and may enjoy all offices into which they have been elected, and shall be indemnified from all penalties and damage incurred by reason of omissions.

5 G.4. c.6.

shall have been heretofore provided to denote any former duties on stamped vellum, parchment, and paper, or to cause new stamps to be provided for that purpose, and to do all other things necessary for putting this act in execution, in the like and in as ample manner as they or the major part of them are authorized to put in execution any former law concerning stamped vellum, &c.; and such persons so providing appointments, &c. as aforesaid, duly stamped, or procuring the same to be duly stamped, in manner aforesaid, are hereby confirmed and qualified to act as clerk of the peace, town-clerk, or other public officer, or member or members, officer or officers of such cities, corporations, and borough towns respectively, to all intents and purposes; and may hold, enjoy and execute such offices, or any other office or offices into which he or they hath or have been elected, notwithstanding his or their omission, or the omission of any of their predecessors, in such cities, corporations, or borough towns as aforesaid; and shall be indemnified and discharged of and from all incapacities, disabilities, forfeitures, penalties, and damages by reason of any such omission; and none of his or their acts shall be questioned or avoided by reason of the same.

Not to extend to restore persons to any office avoided by judgment.

§ 7. Provided always, that this act shall not extend to restore or entitle any person or persons to any office or employment, benefice, matter or thing whatsoever, already actually avoided by judgment of any of H. M.'s courts of record, or already legally filled up and enjoyed by any other person; but that such office or employment, benefice, matter, or thing so avoided, or legally filled up and enjoyed, shall be and remain in and to the person or persons who is or are now, or shall at the passing of this act be legally entitled to the same, as if this act had never been made.

Persons paying the duties either before or within six months after execution of indentures, to serve as clerks to attornies, &c. who shall have neglected to cause affidavits thereof to be filed and enrolled within the time required, indemnified on causing the same to be done on or before first day of Hilary Term 1825.

§ 8. And whereas many persons who may have paid the proper stamp duties, either before or within six months after the execution of the contracts in writing entered into by them to serve as clerks to attornies or solicitors, scriveners, or notaries public in *G. B.*, have omitted to cause affidavits to be made, and afterwards to be filed in the proper office, of the actual execution of such contracts, and have also omitted to cause such contracts and the indentures thereof to be inrolled within the time in which the same ought to have been done; and many solicitors, attornies, notaries public, and others, may have omitted to take out annual certificates, or to enter the same in the proper office, and many infants and others, may thereby incur certain disabilities: It is enacted, That every person who shall, either before or within 6 months after the execution of such contract or indenture, have paid the proper stamp duty in that behalf, and who at the passing of this act shall have neglected or omitted to cause any such affidavit or affidavits as aforesaid to be made and filed, or such contract or indenture to be inrolled, and who, on or before the first day of *Hilary* term 1825, shall cause such contract or indenture to be inrolled with the proper officer in that behalf, and one or more affidavit or affidavits to be made, and afterwards to be filed in such manner as the same ought to have been made and filed, in due time, shall be and is hereby indemnified, freed, and discharged from and against all penalties, forfeitures, incapacities, and disabilities, in or by any act or acts mentioned and incurred or to be incurred for or by reason of such neglect or omission; and every such affidavit and affidavits so to be made, and which

shall be duly filed on or before the first day of *Hilary* term 1825, shall be as effectual to all intents and purposes as if the same had been made and filed within the respective times the same ought, by the laws now in being for that purpose, to have been made and filed; and that the respective officer or officers who ought to receive, file, enter, or register such contract or indenture, or affidavit or affidavits, shall not refuse to receive, file, enter, or register the same, by reason that the attorney, solicitor, or notary public, to whom such infant or other person shall have been articled or have contracted to serve, shall have neglected to take out his annual certificate, or to register the same, but such officer or officers are hereby directed and empowered to receive, file, enter, or register the same, notwithstanding such omission; and that every person who shall have regularly served any attorney or attornies, solicitor or solicitors, notary public or notaries public, for the term of years required by law, shall not be prevented or disqualified from being admitted an attorney, solicitor, or notary public, by reason of any omission of the person or persons to whom he served for the same term, or for any part thereof, having so neglected to take out his annual certificate, or to register the same; provided that such person is otherwise entitled to be created and admitted to such office by the laws now in force relating thereto. 5 G.4. c.6.

Neglect of taking out annual certificates not to prevent persons who have served their term from being admitted.

§ 9. Enacts, That in case any action, suit, bill of indictment, or information, shall from and after the passing of this act be brought, carried on, or prosecuted against any person or persons hereby meant or intended to be indemnified, recapacitated, or restored, for or on account of any forfeiture, penalty, incapacity, or disability whatsoever, incurred or to be incurred by any such neglect or omission, such person or persons may plead the general issue, and upon their defence give this act and the special matter in evidence upon any trial to be had thereupon.

Persons prosecuted, and hereby meant to be indemnified, may plead the general issue.

Indictment.

§ I. *Indictment, what.*
II. *What Offences are indictable.*
III. *Within what time an Indictment shall be brought.*
IV. *How far several Offenders or several Offences may be joined in one Indictment.*
V. *Whether the Grand Jury may examine Witnesses against the King.*
VI. *How many Witnesses are requisite to an Indictment.*
VII. *Whether a Grand Jury may find an Indictment specially.*
VIII. *Indictment to be in* English.
IX. *Form of an Indictment. And herein of Indictments in Cases of Felonies committed on board Vessels employed on Canals — Navigable Rivers — on Stage*

Coaches and Waggons; and on the Boundaries of Counties. [*Stats.* 59 *G.* 3. *c.* 27.—*c.* 96. (*a*)]

X. *Charges of an Indictment.*

XI. *Pleading.*

XII. *Acquittal upon an Indictment.*

XIII. *Indictments in Counties of Cities and Towns Corporate.*

As to the removal of an indictment into another court, see Vol. I. title Certiorari.

I. Indictment, what.

INDICTMENT cometh of the *French* word *enditor*, and signifieth, in law, an accusation found by an inquest of twelve or more upon their oath. An indictment is always the suit of the king, and as it were his declaration; and *the party who prosecutes it is a good witness to prove it.* And when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a form of indictment, it is called a *presentment;* and when it is found by jurors returned to enquire of that particular offence only which is indicted, it is properly called an *inquisition.* 1 *Inst.* 126. 2 *Haw. c.* 25. § 1.

II. What Offences are indictable.

All offences of a *public* nature, i. e. such acts or attempts as tend to the prejudice of the community in general, are indictable. And therefore not only all actual breaches of the peace, as *Riots, Affrays, Assaults,* &c., but also every criminal irregularity that tends to disturb the good order of government, or to endanger or annoy the tranquillity, welfare, or convenience of the public, is punishable by indictment. *Vide* 2 *Haw. c.* 25. § 4. 3 *MS. Sum.* 28. *Et per Lawrence* J., *R.* v. *Higgins,* 2 *East,* 21.

The following therefore are indictable misdemeanors, *viz.*

1. All open offences against God and religion, or against public decency, that tend to corrupt the morals of the people. Of this sort are blasphemous books, or any prophane or obscene publications, bawdy-houses, &c. *Sir C. Sedley's case,* 1 *Sid.* 168. *R.* v. *Crunden,* 2 *Campb.* 89. 1 *Russ.* 64.

2. All crimes that are *mala in se,* and of evil example.

3. All practices that tend to endanger the constitution, as bribery at elections, seditious pamphlets, &c.

4. All contempts of the King or his courts.

5. All attempts to corrupt, mislead, or pervert public justice, or to make it a handle of fraud or oppression.

6. All acts and designs against the common occasions, necessities, and general commerce of the public. Such as unlawful combinations, monopolies, forestalling, engrossing and regrating, adulteration of victuals, and all public cheats, &c. &c.

(*a*) As to indictments against persons stealing property from mines, &c. see stat. 56 *G.* 3. *c.* 73., which, by stat. 1 *G.* 4. *c.* 102., is extended to all cases of offenders charged with burglary, felony, grand or petit larceny, or criminal breach of trust, committed on the goods, &c. of any partners whatsoever. See tit. Larceny, § 1. *post,* and 1 *B.* & *A.* 392.

In this class are also included the several kinds of common nuisances, both positive and negative, *i. e.* either positive acts that annoy the public, or the neglect of some duty which the public have a right to require from the defendant, and by the omission of which a general inconvenience arises.

It is an indictable offence to incite and solicit a servant to steal his master's goods, though the servant do not steal the goods, and no other act be done except the soliciting and exciting. *R.* v. *Higgins*, 2 *East*, 5. See also stat. 3 *G.*4. *c.*38. § 3. Vol. I. tit. Accessary, p. 18.

And such offence is indictable at the quarter sessions as falling in with that class of offences which, being violations of the law of the land, have a tendency, as it is said, to a breach of the peace, and are therefore cognizable by that jurisdiction. In the case referred to, *Lord Kenyon* C.J., in delivering his opinion, said, "Can it be a question, in a country professing to have laws subservient to justice and morality, whether this be an offence? It would be a slander upon the law to suppose that an offence of such magnitude is not indictable." *Lawrence* J. said, "All offences of a public nature, that is, all such acts or attempts as tend to the prejudice of the community, are indictable. Then the question is, whether an attempt to incite another to steal is not prejudicial to the community? of which there can be no doubt. The whole argument for the defendant turns upon a fallacy in assuming that no act is charged to have been done by him; for a solicitation is an act. It is an endeavour or attempt to commit a crime. The doctrine laid down by Lord *Mansfield* in *Rex* v. *Scofield*, *Cald.* 397. 403. comprises all the principles of the former decisions, that so long as an act rests in bare intention it is not punishable by our laws; but immediately when an act is done, the law judges not only of the act done but of the *intent* with which it is done; and if accompanied with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable. That case is ably reported, and contains every thing convincing that can be said on the subject.

In a late case in the Court of K. B., it was held an indictable offence *unlawfully* and *injuriously* to carry a child infected with the small-pox along a public highway, in which persons are passing, and near to the habitations of the king's subjects. *R.* v. *Vantandillo*, 4 *M.* & *S.* 73. See also 2 *Chitt. Crim. L.* 656. 1 *Russ.* 157. **Exposing, in a public highway, a child infected with the small-pox.**

In a subsequent case in the same court it was held also an indictable offence in an apothecary, after having inoculated children, *unlawfully* and *injuriously* to cause them to be exposed in the public street, to the danger of the public health. *Rex* v. *Burnet*, 4 *M.* & *S.* 272.

N. B. The defendant was sentenced to six months' imprisonment. See *R.* v. *Sutton*, 4 *Burr.* 2116.

Also, it seems to be a good general ground, that wherever a *statute* prohibits a matter of *public* grievance to the liberties and security of a subject; or commands a matter of public convenience, as the repairing of the common streets of a town; an offender against such statute is punishable not only at the suit of the party grieved, but also by way of indictment for his contempt of the statute, unless such method of proceeding do manifestly **Offences against statutes public.**

appear to be excluded by it. Yet if the party offending hath been fined to the king in the action brought by the party (as it is said that he may in every action for doing a thing prohibited by statute), it seems questionable whether he may afterwards be indicted, because that would make him liable to a second fine for the same offence. 2 *Haw. c.* 25. § 4.

Private. But if a statute extend only to *private* persons, or if it extend to all persons in general, but chiefly concerns disputes of a private nature, as those relating to distresses made by lords on their tenants; it is said that offences against such statutes will hardly bear an indictment. *Ib.*

An indictment will not lie for setting a person in the footway in the street, to distribute hand-bills, whereby the footway was impeded and obstructed. *R.* v. *Sermon*, 1 *Burr.* 516.

But it was held by Lord *Ellenborough* C.J. that every unauthorised obstruction of a highway, to the annoyance of the king's subjects, is an indictable offence, in *R.* v. *Cross*, 3 *Camp.* 227. where it was held to be an indictable offence for stage coaches to stand plying for passengers in the public streets.

An indictment will not lie for throwing down skins into the public way, by which a personal injury is accidentally occasioned. *R.* v. *Gill*, 1 *Str.* 190. Nor for acting, not being qualified, as a justice of the peace, *Castle's Case, Cro. Jac.* 643. Nor for selling *short* measure, *R.* v. *Osborn*, 3 *Burr.* 1697. Nor for excluding commoners by inclosing, *Willoughby's Case, Cro. Eliz.* 90. Nor for an attempt to defraud, if neither by false tokens nor conspiracy, *R.* v. *Channell*, 2 *Str.* 793. Nor for secreting another, *R.* v. *Chandler*, 2 *Ld. Raym.* 1368. Nor for bringing a bastard child into a parish, *R.* v. *Warne*, 1 *Str.* 644. Nor for entertaining idle and vagrant persons in the defendant's house, *R.* v. *Langley*, 1 *Ld. Raym.* 790. Nor for keeping a house to receive women with child and deliver them, *R.* v. *Macdonald*, 3 *Burr.* 1645.

Statutes, generally. Also, where a statute makes a new offence, by prohibiting and making unlawful any thing that was lawful before, and appoints a particular method of proceeding, without mentioning an indictment, it seemeth to be settled at this day that no indictment can be maintained. 2 *Str.* 679. 2 *Burr.* 803. 2 *Haw. c.* 26. § 4. 1 *Rep.* 67.

But Lord *Hale* (2 *Hale*, 171.) distinguishes upon this, and says, that if a statute prohibit any act to be done, and by a substantive clause give a recovery by action of debt, bill, plaint, or information, but mentions not an indictment, the party may be indicted upon the *prohibitory clause*, and thereupon fined, but not to recover the penalty. But then it seems the fine ought not to exceed the penalty; but if the act be not prohibitory, but only that if any person shall do such a thing, he shall forfeit so much, to be recovered by action of debt, bill, or plaint, or information, then he cannot be indicted for it, but the proceeding must be by action, bill, plaint, or information. *Vide R.* v. *Harris*, 4 *T. R.* 202.

Also, where a statute adds a further penalty to an offence prohibited by the common law, and prescribes a partial remedy by a summary proceeding, there either method may be pursued. 2 *Haw. c.* 25. § 4. 2 *Burr.* 803. Therefore it is indictable to disobey an order of sessions for the maintenance of relations under the stat. 43 *Eliz. c.* 2. though that statute gives a penalty; for before the statute of *Elizabeth* disobedience to an order of sessions

was an offence indictable at common law. *R.* v. *Robinson, Clerk*, 2 *Burr*, 799.

The true rule of *distinction* seems to be, that where the offence intended to be guarded against by a statute, was *punishable* before the making of such statute prescribing a particular method of punishing it, there such particular remedy is cumulative, and does *not* take away the former remedy. But where the statute only enacts, "that the doing any act not punishable before, shall *for the future* be punishable in such and such a *particular* manner," there it is necessary that such *particular* method, by such act prescribed, *must be specifically pursued;* and not the common law method of an *indictment. Per* Lord *Mansfield* C. J. *S. C.* 2 *Burr.* 805.

Where offences created by statute are not indictable.

In *R.* v. *Balme*, 2 *Cowp.* 648. The defendants were indicted for disobeying an order of justices on the statute 13 *G.* 3. *c.* 78. for the widening of a highway. It was objected, that a summary method of proceeding before the justices being directed by the statute for the recovery of a penalty, the prosecution ought to have been in that form, and not by way of indictment. But by the Court, disobeying an order of justices is an offence at common law; and, therefore, the prosecutor might proceed either way; the penalty given by the statute is only accumulative.

And it is a general rule that subsequent statutes, which add accumulative penalties, do not repeal former statutes. *R.* v. *Jackson*, 1 *Cowp.* 297.

Wherever there is a prohibitory law, if it be still in force, the proper remedy under it is by indictment; and where a statute forbids the commission of any act, the doing it wilfully is indictable, although it be done without any corrupt motive. 1 *Cowp.* 297. 4 *T. R.* 457. 5 *T. R.* 607.

It is also a clear and established principle, that when a new offence is created by an act of parliament, and a penalty is annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty, but he may proceed on the prior clause, on the ground of its being a misdemeanor. *Per Ashhurst* J., 4 *T. R.* 205.

Rex v. *Hollis, Sitt. at West. after M. T.* 60 *G.* 3. *cor. Abbott* C. J. 2 *Stark. N. P.* 536.—This was an indictment against the defendant for not having removed an encroachment made by extending his house in *Goswell-street*, in pursuance of an order made by two justices of the peace under the building act, (14 *G.* 3. *c.* 78.) confirmed by the court of quarter sessions, upon an appeal by the defendant against the order.—After the indictment had been read, *Boland*, for the defendant, submitted to the court that no indictable offence was alleged on the face of the indictment, and urged that this was the proper time for making such an objection, for which he referred to a case before Lord *Ellenborough*, who said that it was proper to make such an objection *in limine;* and he was prepared, he said, to shew that the conviction before the two justices was void; and that if so, no judgment could be supported upon a vitious record.——*Abbott* C. J. said, that it appeared that the defendant was charged with having disobeyed an order of two magistrates, and that he thought the objection was premature in the present stage of the business. The counsel for the prosecution then gave in evidence, the petition of the defendant to the court of quarter sessions to receive his appeal. This petition re-

Where an indictment for disobeying an order of justices, appears to be founded on an order made in a case in which the justices had no jurisdiction, the court will direct an acquittal at the sittings, although the defect appear on the record.

cited the information and conviction before the two magistrates. Both the information and adjudication charged the defendant with having unlawfully made an addition to a house of the third rate or class of buildings, projecting three feet six inches beyond the upright line of the said building. The adjudication of the justices alleged that this was a common nuisance; and, further, directed that the same should be abated on or before the 12th of *January* then next. *Bolland*, for the defendant, objected that no offence against the building act, 14 *G.* 3. *c.* 7. § 40. 60. was charged in the conviction, and consequently that no indictment could be supported for disobedience of an order which was utterly void. The building act, § 49., enacted, that no bow-window or other projection should be built or added to any first, second, third, or fourth rate building next to any public street, &c., so as to extend beyond the general *line of the fronts of the houses*, except such projections as may be necessary for copings, cornices, &c. *Gurney* and *Andrews*, for the prosecution, answered that the order of sessions was grounded upon the act of the defendant, as set forth in his own petition; and that by the s. 78. of the building act, it was enacted, that the judgment and determination of the justices at the sessions should be binding on the party. It was also urged, that as the objection appeared upon the record, the proper way of objecting would be by motion in arrest of judgment. — *Abbott* C. J. The order would be binding and conclusive in a case where the justices had jurisdiction over the subject matter; but where they have not, they cannot make an order binding upon any one. The subject matter of the order is not within the act of parliament. The defendant was accordingly acquitted.

III. Within what time an Indictment shall be brought.

31 Eliz. c. 5. By stat. 31 *Eliz.* *c.* 5. All indictments upon any statute penal whereby the forfeiture is limited to the king, shall be sued within two years after the offence committed; if the forfeiture be limited to the king and prosecutor, the suit shall be in one year: and in default thereof, the same shall be sued for the king within two years after that year ended. But where a statute limits a shorter time, the suit shall be brought within such time limited.

But for indictments of felonies and other misdemeanors where there is no forfeiture to the king, or to the king and prosecutor, no time is limited by any statute; but the several acts of general pardon have the effect of a like limitation. The last act of which kind was that of the 20 *G.* 2. *c.* 52. for certain offences committed before *June* 15, 1747.

IV. How far several Offenders or several Offences may be joined in one Indictment.

Several offences in one indictment. It is no objection in arrest of judgment that an indictment contains several charges of the same nature (as several misdemeanors), in the different counts; for the judgment is the same; it would be otherwise indeed, if the legal judgment on each count were different, for that would be like a misjoinder in civil actions. *Young & others* v. *the King in error*, 3 *T. R.* 107.

[It was said by *Buller* J., in *Young & others* v. *the King*, *in error*, 3 *T. R.* 105. "In misdemeanors, the case *R.* v. *Benfield & Saunders*, 2 *Burr.* 984., shews that it is no objection to an indict-

ment that it contains several charges. The case of felonies admits of a different construction; but even there it is no objection in this stage of the prosecution. On the face of an indictment every count imports to be for a different offence, and is charged as at different times; and it does not appear on the record whether the offences are or are not distinct. But if it appear before the defendant has pleaded, or the jury are charged, that he is to be tried for separate offences, it has been the practice of the judges to quash the indictment, lest it should confound the prisoner in his defence, or prejudice him in his challenge of the jury; for he might object to a juryman's trying one of the offences, though he might have no reason to do so in the other. But these are only matters of prudence and discretion. If the judge who tries the prisoner does not d scover it in time, I think he may put the prosecutor to elect on which charge he will proceed. But if the case has gone the length of a verdict, it is no objection in arrest of judgment. So, where evidence affects several persons differently, I have selected the evidence as applicable to each, and left their cases separately to the jury."

This is no objection even in the case of felonies, still less is it so in misdemeanors.(a) *Per Grose* J. *S. C.*]

One indictment may be preferred for assaulting two persons.

It appears to have been formerly holden that a person could not be prosecuted upon one indictment for assaulting two persons, each assault being a distinct offence. *R.* v. *Clendon*, 2 *Ld. Raym.* 1572. 2 *Str.* 870. But in *R.* v. *Benfield & Saunders*, 2 *Burr.* 984., the court held this case of *Clendon* not to be law, and said, cannot the king call a man to account for a breach of the peace because he broke two heads instead of one? It is a prosecution in the king's name for the offence charged; and not in the nature of an action, where each person injured is to recover separate damages.

Several offenders joined in one indictment.

Nor is it any objection on demurrer, that several different defendants are charged in different counts of an indictment for offences of the same nature, where there may be the same plea and the same judgment, though it may be a ground for an application to the discretion of the court to quash the indictment. *R.* v. *Kingston and others*, 8 *East*, 41.

Several offenders.

If there be *several offenders* who commit the same *offence*, though in law they are several offences in relation to the several offenders, yet they may be joined in one indictment; as if several commit a robbery or burglary, or murder. 2 *Hale*, 173.

Larcenies committed of several things, though at several times, and from several persons, may be joined in one indictment. 2 *Hale*, 173.

[If the crime wholly arise from any such joint act, which in itself is criminal, without any regard to any particular personal default of the defendants, the indictment may charge the defendants jointly or severally; and some may be acquitted and some convicted. But where the offence indicted does not wholly arise from the joint act of all the defendants, but from such act joined with some personal particular, defect or omission of each defendant, without which it would be no offence, the indictment must charge them severally and not jointly; because the offence of

(a) A count for embezzling bank-notes upon the statute may be joined with a count for larceny. *Rex* v. *Johnson*, 3 *M. & S.* 539.

each defendant arises from a defect peculiar to himself. 2 *Haw.* c. 25. s. 89.]

Two may be indicted jointly for a battery or extortion. *Reg.* v. *Atkinson*, 1 *Salk.* 382.

But in *Rex* v. *Kingston & others*, 8 *East*, 46., where several were indicted for an offence against an act of parliament, and there were several counts, in some of which some were named and not the rest, and each count charged each set of persons jointly, and this was objected to on demurrer, as being a misjoinder of counts against different sets of offenders, and not like charging the same defendants with different offences *ejusdem generis*, in different counts; Lord *Ellenborough* C. J. said, this would have been a good ground of application to the court to quash the indictment for the inconvenience which might arise at the trial, from joining different counts against different offenders; but where to the offences so charged in different counts there may be the same plea and the same judgment, there is no authority for saying that such joinder in one indictment is bad in law; nor is there any legal incongruity on the face of it to warrant us in giving judgment for the defendants on demurrer.

So in the aforesaid case of *R.* v. *Benfield & Saunders*, 2 *Burr.* 985. which was for the defendants' singing a libellous song against *John* and *Jane Cooke;* the court held, that this being a joint act, done by both (for they had both joined in the act of singing the libellous matter), they might well be joined in one and the same indictment.

And so it is, though the offences are of several *degrees*, but dependent one upon another, as the principal in the first degree, and the principal in the second degree, to wit, present, aiding and abetting in the principal, and accessary before or after. 2 *Hale*, 173.

Also several persons may be indicted in the same indictment for *several offences of the same nature*, as, for keeping disorderly houses: but the indictment ought to set forth that they severally did so. *Id.*

But this is only to be understood, where the offences may be joint, as in extortion, maintenance, receiving stolen goods, and the like; and not where the offence is a separate act in each, as in the case of *R.* v. *Philips & others*, 2 *Str.* 921. Six were indicted in one indictment for *perjury*, and four of them pleading were convicted. It was moved, in arrest of judgment, that the crime of perjury is in its nature several, and two cannot be indicted together. And by the court there may be great inconveniences if this be allowed; one may be desirous to have a *certiorari*, and the other not; the jury on the trial of all may apply evidence to all that is but evidence against one. And they cited a case, *Q.* v. *Hodgson & others*, where two were indicted for being scolds, and compared to barratry, and it was held not to lie. And in the principal case judgment was arrested.

[In *Tremaine's P. C.* 138., there is a precedent of an indictment against three for perjury committed by the three; they deposed to one fact, but their evidence differed each from each. *Rex* v. *Jole*, *vide* 7 *T. R.* 318.]

An indictment for a misdemeanor, containing several

Rex v. *Levy and others*, *Sitt. at West. after H. T.* 59 *G.* 3. *cor. Abbott* C. J. 2 *Stark. A. C. N. P.* 458. This was an indictment against *Levy* and others for a conspiracy. The indictment alleged

that *Elizabeth Harris* being in a state of pregnancy, during her parturition, the defendants conspired together by making loud noises, and by knocking violently against the wall of the room in which the prosecutrix lay, to injure and terrify her. There were two counts for conspiracies, and one for a riot, &c. It appeared that the prosecutrix, *Elizabeth Harris*, was a Jewess, and that she had lived with *James Tweedie*, a Christian, as his wife, under a promise of marriage from him, but that they had never been married; and it was proved, that the defendants (who were Jews), and who it appeared had been offended at the prosecutrix's supposed marriage with a Christian, had, on the day specified in the indictment, *viz.* the 13th of *September*, whilst the prosecutrix was in labour, been guilty of the annoyance complained of in the indictment.—*Andrews*, for the defendants, cited the *King* v. *Lloyd*, (4 *Esp.* 200.) when Lord *Ellenborough* had held that the making loud noises to the disturbance of individuals in the occupation of their chambers, was not an indictable offence. *Abbott* C. J. said, that he could not, sitting there, decide upon the validity of the indictment; the defendants might have demurred, or might move in arrest of judgment. Evidence being afterwards offered of similar conduct on the part of the defendants on a different day from the 13th of *September*, *Andrews* objected, that since but one day was alleged on the record without the addition, "*and on divers others days and times*," it was not competent to the prosecutor's counsel to adduce evidence of any offence on another day; and he referred to a case decided by Lord *Ellenborough*. *Abbott* C. J. said, that the present case was distinguishable from that cited, since here there were two counts for conspiracies and one for a riot; and that evidence at all events might be given under the different counts of offence on separate days. The jury found *Levy* and two others guilty of a conspiracy. (*a*)

counts, alleging several misdemeanors of the same kind on the same day, the prosecutor may give evidence of such misdemeanors on different days.

(*a*) Where several different *felonies* are alleged in the same indictment, it is usual for the judge, in his discretion, to call upon the counsel for the prosecution to select one felony, and to confine the evidence to that particular charge. 3 *T. R.* 106. *Rex* v. *Jones*, 2 *Campb.* 132. *Rex* v. *Kingston*, 8 *East*, 41. But this rule has not been extended to misdemeanors, and it is the common practice to receive evidence of several libels, and of several assaults under the same indictment. See Lord *Ellenborough*'s observations in *Rex* v. *Jones*, 2 *Campb.* 132. *R.* v. *Evans*, *Lanc. Spr. Ass.* 1821. 3 *Stark. C. N. P.* 35. *Cor. Bayley* J. Indictment charged a libel to have been published with intent to defame certain magistrates, and also to bring the administration of justice into contempt, it is sufficient to prove a publication with *either* of these intentions. So in *R.* v. *Dawson*, *York Summ. Ass.* 1821. *Cor. Holroyd* J. Indictment charged prisoner with having assaulted a female child with intent to abuse and carnally to know her. The jury found that the prisoner assaulted the child with intent to abuse her, but negatived the intention charged carnally to know her. Held that the averment of intention was divisible, and prisoner received sentence of imprisonment for 12 months. In *R.* v. *Mitton*, *East's P. C.* 411. Defendant was indicted for an assault with intent to murder prosecutor. Defendant a soldier in marching in file along the *Strand*, wantonly jolted the prosecutor off the pavement, who thereupon struck him with a small stick which he had in his hand, on which defendant aimed a blow at the prosecutor with his bayonet fixed on his musket and thrust him under the ear. Lord *Kenyon* being of opinion that if death had ensued, the offence could have amounted to manslaughter only, directed an acquittal on the *first count*.— In that case there being a second count for a common assault, it was unnecessary to decide whether the defendant might not have been found guilty of an assault simply on the first count without the intention to murder. See 3 *Stark. C. N. P.* 62. *note*. Where the indictment comprehends several distinct misdemeanors charged against

Distinction between felonies and misdemeanors.

V. Whether the Grand Jury may examine Witnesses against the King.

Lord *Hale* (2 *Hale*, 157.) says, that the grand jury at the assizes or sessions ought only to hear the evidence for the king, and in case there be probable evidence they ought to find the bill, because it is but an accusation, and the party is to be put on his trial afterwards.

Which doctrine is also laid down by Ch. J. *Pemberton*, in the case of the earl of *Shaftesbury*. 8 *Howell's St. Tri.* 770.

But the learned editor of *Hale's History* observes upon this, that Sir *John Hawkins*, in his remarks on the said case, unanswerably shews that a grand jury ought to have the same persuasion of the truth of the indictment as a petty jury or a coroner's inquest; for they are sworn to present the truth, and nothing bu the truth. *Vide* 8 *Howell's St. Tri.* 837.

And Lord *Coke* says that seeing indictments are the foundation of all, and they are commonly foui d in the absence of the party accused, it is necessary there should be substantial proof. 3 *Inst.* 25.

VI. How many Witnesses are requisite to an Indictment.

An indictment may be found upon the oath of one witness only, unless it be for high treason, which requires two witnesses, and unless, in any instance, it be otherwise specially directed by act of parliament. 2 *Haw. c.* 25. § 129.

VII. Whether the Grand Jury may find an Indictment specially.

It seems to be generally agreed that the grand jury may not find part of an indictment to be true, and part false; but must either find a true bill or *ignoramus* for the whole; and if they take upon them to find it specially, or conditionally, or to be true for part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to indicted anew. 2 *Haw. c.* 25. § 2.

But where there are two counts in the indictment, as one for a riot, another for an assault; the same may be considered as two distinct indictments; and the jury may affirm the bill as to one of the counts, and reject it as to the other. *Rex* v. *Fieldhouse*, 1 *Cowp.* 325.

And where a bill is presented for murder, the grand jury may find a true bill for manslaughter only. So ruled *per Garrow* B. *at Staff. Sum. Ass.* 1822. *Rex* v. *Caulkin, MS.*

different persons, it may be a good ground of application to the discretion of the court to quash the indictment, on account of the inconvenience which might result at the trial from joining different counts against different offenders. Many of the older precedents contain a great number of different charges against the same defendant. In *Broughton*'s case, *Trem.* 111., the indictment charged no less than twenty distinct acts of extortion. See also *Rex* v. *Lee*, *Trem.* 248., and *Rex* v. *Baxter*, *Trem.* 55., where different libels are set out.

Rex v. *Mary Doran*, 1 *Leach*. 538. At the *Sept. sess.* 1790, at *Hicks's Hall*, for the county of *Middlesex*, the managers of the *Westminster* insurance office preferred two indictments at the same time against one *Mary Doran*; the one for a felony at the common law, and under stat. 9 *G*. 1. *c*. 22. for setting fire to and burning the house of *Daniel Mathews*, in *Little-Russel-Street*, *Covent-Garden*; and the other for a misdemeanor, charging, that she, being possessed of the same house, as tenant for years, to *Daniel Mathews*, did set fire to a certain room on the second floor in the said house, with intent to burn the houses contiguous and adjoining thereto.

Two indictments for the same offence, one for the *felony*, under a statute, and the other for the *misdemeanor*, at common law, ought not to be preferred or found at the same time.

The grand jury found both these indictments to be true bills; and the indictment for the felony was transmitted, as usual, from *Hicks's Hall* to the *O. B.* to be tried: but when the prisoner was put to the bar, the counsel for the crown perceiving from the depositions which were taken before the magistrate, that there was not sufficient evidence to sustain the charge of *felony*, stated to the court, that as there was another indictment found against the prisoner for the *misdemeanor*, he should, under these circumstances decline the prosecution for the capital offence. —— *Eyre* C. B. expressed a strong disapprobation of the practice of preferring different indictments at the same time, on the same case, for the *felony* and the *misdemeanor*; and desired that notice might be sent to the clerk of the indictments at *Hicks's Hall*, to prevent it in future. The grand jury cannot with propriety find two indictments for the same offence at the same time, and the continuance of the practice may produce many inconveniences.

VIII. Indictment to be in English.

By stats. 4 *G*. 2. *c*. 26. and 6 *G*. 2. *c*. 14. all indictments, informations, inquisitions, and presentments, shall be in *English*, and be written in a common legible hand, and not court hand; on pain of 50*l*. to him that shall sue in three months.

IX. Form of an Indictment.

In order to understand this matter rightly, it is judged requisite first to insert the entire form of an indictment, and then to take it in pieces, and explain the several parts of it in their order.

Which order shall be as follows:

1. *The caption.*
2. *The description of the person indicted.*
3. *Of the allegation of time, and the words* vi et armis.
4. *Of the allegation of place.*
5. *The description of the person indicting.*
6. *The description of the offence.*
7. a. *The conclusion, for an offence at common law.*
   b. ———— *for an offence by statute.*
   c. ———— *for an offence both at common law and by statute.*

The instance which is chosen is on the statute of stabbing. 1 *J*. *c*. 8.

The *caption* of the indictment is no part of the indictment itself, (2 *Hale*, 166.) but is the style or preamble, or return that is made from an inferior court to a superior, from whence a *certiorari* issues to remove; or when the whole record is made up in form for the record of the indictment, as it stands upon the file in the court where it is taken, is only thus, *The jurors for our lord the king upon their oath present:* when this comes to be returned upon a *certiorari*, it is more full and explicit, as follows:

Westmoreland. } *AT the general quarter sessions of the peace holden at* Appleby *in and for the county aforesaid, the* —— *day of* —— *in the* —— *year of the reign of our sovereign lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland *king, defender of the faith, before* J. P. *and* K. P. *esquires, and others their associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, by the oath of* —— *good and lawful men of the county aforesaid, sworn and charged to enquire for our said lord the king, and for the body of the county aforesaid, it is presented:*

That John Armstrong *late of* Appleby *in the county aforesaid, yeoman, not having God before his eyes, but being moved and seduced by the instigation of the devil, on the* —— *day of* —— *in the* —— *year of the reign of our said sovereign lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland *king, defender of the faith, at the hour of nine in the afternoon of the same day with force and arms at* Appleby *aforesaid in the county aforesaid, in and upon one* George Harrison *in the peace of God and of our said lord the king then and there being (the aforesaid* George Harrison *not having any weapon then drawn, nor the aforesaid* George Harrison *having first stricken the said* John Armstrong) *feloniously did make an assault; and that the aforesaid* John Armstrong, *with a certain drawn sword of the value of five shillings, which he the said* John Armstrong *in his right hand then and there had and held, the said* George Harrison *in and upon the right side of the belly near the short ribs of him the said* George Harrison, (*the aforesaid* George Harrison *as is aforesaid then and there not having any weapon drawn, nor the aforesaid* George Harrison *then and there having first stricken the said* John Armstrong), *then and there feloniously did stab and thrust, giving unto the said* George Harrison *then and there with the sword aforesaid, in form aforesaid, in and upon the right side of the belly near the short ribs of him the said* George Harrison, *one mortal wound of the breadth of one inch and of the depth of nine inches; of which said mortal wound he the said* George Harrison *then and there instantly died: And so the jurors aforesaid upon their oath aforesaid do say that the said* John Armstrong *him the said* George Harrison *on the aforesaid thirtieth day of* March *in the year aforesaid at* Appleby *aforesaid in the county aforesaid in manner and form aforesaid feloniously did kill, against the peace of our said lord the now king, his crown and dignity, and against the form of the statute in such case made and provided.*

Westmoreland.] The name of the county must be in the margin, or repeated in the body of the caption. 2 *Hale*, 166.

The county which is laid in the margin denotes the county whence the grand jurors come, and the offence must appear to have been committed in that same county; if it be otherwise it will be fatal to the indictment; and *à fortiori*, if it expressly appear by the indictment that the offence arose in a county, &c. different from that for which the jury was returned.—And the vill or vills, &c. in which the offence is committed must be alleged to be in the county named in the margin; and if no other county be mentioned it may be *in comitatu prædicto*.

In all *criminal prosecutions* it will *not* be sufficient to put the county in the margin; for that can only prove the order made by the justices of that county; but it is no argument that the fact was committed in that county. *Rex* v. *Austin*, 8 *Mod.* 309. *Fort.* 325.

In *orders* the margin is to be considered as *part* of the order, and a clear plain reference to it is sufficient; but in *indictments*, the county must be expressed in the *body*, and a reference to the *margin* is *not sufficient*. So ruled in *Rex* v. *Inh. Holbeck in Leeds*, *Burr. S. C.* 198.

If a man be stricken in one county and carried into another, the indictment shall be found where the death happens. 2 *East's P. C.* 343. 2 & 3 Ed. 6. c.24.

If goods be stolen in one county and carried into another, it may be found in either.

At the general quarter sessions of the peace,] The court where the indictment is made must be expressed; otherwise the caption is erroneous. 1 *Hale*, 166. 2 *Haw. c.* 25. § 118.

Holden at Appleby *in and for the county aforesaid.*] It must appear where the sessions was held; and that the place where it was held is within the extent of the commission. 2 *Hale*, 166.

Where the caption of the indictment stated the court of quarter sessions where such indictment was found, to have been holden on an impossible day, it was holden to be fatal. *R.* v. *Fearnley*, 1 *T. R.* 316.

The —— *day of* —— *in the* —— *year of the reign of our sovereign lord* George *the fourth.*] It hath been adjudged that if the caption of the indictment describe the sessions holden in the time past, and not in the time present; or as holden on such a day in such a year of the king, without ascertaining what king, it is insufficient. But it seems to be agreed that it is sufficient to express the year of the king, without adding that of our lord. 2 *Haw. c.* 25. § 127.

The —— *day.*] Figures to express numbers are not allowable in an indictment; but numbers, whether cardinal or ordinal, must be expressed in words. 2 *Hale*, 170. Or at least in *Roman* numerals. *R.* v. *Philips*, 1 *Str.* 261.

Before J. P. *and* K. P. *esquires, and others, their associates.*] It is not necessary to name all the justices, but only so many as are enabled to hold a sessions, and the rest may be supplied by the words *and others their associates*. 2 *Hale*, 167.

And although no sessions can be holden without one of the justices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them, are of the *quorum*; for it is sufficient if *de facto* the sessions be holden before him or

them that are of the *quorum*, although not so mentioned, and so is the usual course. 2 *Hale*, 167.

And also to hear and determine, &c.] These words are necessary, because without this clause (by the commission) they cannot proceed by indictment. 2 *Hale*, 166. 1 *Str.* 442.

By the oath.] If the caption conclude that *it is presented* without saying *on their oath*, it shall be quashed: for their presentment must be upon oath, and so returned. 2 *Hale*, 168.

By the oath of———.] It must name the jurors that presented the offence; and therefore by the oath of *A. B.*, *C. D.* and others, is not good; for it may be the presentment was by a less number than twelve, or that some one of them was incapacitated who might influence all the rest, as for instance, a person outlawed; in which case the indictment may be quashed by plea. 2 *Hale*, 167.

Good and lawful men of the county aforesaid.] These words also, Ld. *Hale* saith, are necessary. But Mr. *Hawkins* says, that it is no exception to an indictment found in the superior courts, and that it hath been overruled; because all men shall be intended to be honest and lawful till the contrary appear. 2 *Hale*, 167. 2 *Haw. c.* 25. § 17.

Sworn and charged to inquire for our said lord the king and for the body of the county aforesaid.] Though Lord *Hale* says it seems requisite to add this clause, 2 *Hale*, 167; it is holden in *R.* v. *Morgan*, 1 *Ld. Raym.* 710. that it is not necessary.

II. Of the Indictee.

It is presented; that John Armstrong, *late of* Appleby.] The name of the party indicted regularly ought to be inserted, and inserted truly in every indictment. 2 *Hale*, 175.

But the inhabitants of a parish may be indicted for not repairing the highway, although no person is particularly named. *Wood's Inst. b.* 4. *c.* 5.

1 H. 5. c. 5. Statute of additions.

To prevent the inconvenience of troubling one person for another, it is by stat. 1 *H.* 5. *c.* 5. "*ordained and established, that in every original writ of actions personal, and appeals, and indictments in which the exigent shall be awarded, to the names of the defendants in such writs original, appeals and indictments,* additions *shall be made of their estate or degree, or trade, and of the towns or hamlets, or places, and the counties, of the which they were, or are, or in which they are or were or may be conversant: and if by process upon the said original writs, appeals, or indictments, in the which the said additions be omitted, any outlawries be pronounced, that they be void, frustrate, and holden for none; and that before the outlawries pronounced, the said writs and indictments shall be abated by exception of the party.*"

In which the exigent shall be awarded.] The exigent is a writ whereby the sheriff is commanded to proclaim the party in the county court, in order to his being outlawed. And by these words the act extendeth only to cases where process of outlawry may be awarded; and therefore it extendeth not to an indictment for encroaching on the highway, because in that case process of outlawry lieth not, but a distress. *Cro. Eliz.* 148.

But it extends to any indictment upon which process of outlawry lies, as well as to an appeal. 2 *Haw. c.* 25. § 70.

Addition. *To the names of the defendants.*] Regularly by the common law, every natural man, having no name of dignity, ought to be named in all originals and other suits by his christian name and surname; and that, before this act, sufficed; but if he had a name of inferior dignity (as knight or banneret) he ought to be named by his christian name and surname, and by the addition of his name of dignity. 2 *Inst.* 655.

It is not necessary that there should be any *addition* to the name of a prosecutor or prosecutrix in an indictment. *Sull's case,* 2 *Leach,* 861.

Of a corporation sole. If there be a corporation of one sole person that hath a fee simple, and may have a writ of right, he may be named by the common law by his christian name without any surname, as *John* bishop of *P.* 2 *Inst.* 666.

Of a corporation aggregate. If it be a corporation aggregate of many able persons, as mayor and commonalty, dean and chapter; the mayor or dean need not to be named by his christian name, because that such a corporation standeth in lieu both of the christian name and surname. 2 *Inst.* 666.

Of a peer. A duke, marquis, earl, viscount, or baron, might by the common law be named by his christian name, and by the name of his dignity; as *John* duke of *M.* 2 *Inst.* 666.

Surname. According to some authorities, the defendant was bound to answer to an indictment for felony, though his *name of baptism* was mistaken. 2 *Hale,* 238. 1 *Stark. C. P.* 42.

According to others, no advantage could be taken of a mistake in the *surname, Staunf. l.* 3. *c.* 18. *f.* 182., though there might be of a mistake in the *christian name.* 2 *Haw. c.* 25. § 68, 69. 1 *Stark. C. P.* 43.

One indicted for a misdemeanor may plead that his name is Shakespeare, and not Shakepeare, for the latter is not *idem sonans. R.* v. *Shakespeare,* 10 *East,* 83.

A man may be known by two surnames, as *J. S.* and *J. D.*, but not by two christian names, as *J. S.* and *W. S.* *Bro. Abr. tit. Misnom. pl.* 47.

But the mistake in the christian name is pleadable, and the party shall be dismissed from that indictment. 2 *Hale,* 176.

But the safest way is to allow his plea of *misnomer,* both as to his surname and as to his christian name; for he that pleads *misnomer* of either must in the same plea (viz. in *abatement*) set forth what his true name is, and then he concludes himself; and if the grand jury be not discharged, the indictment may presently be amended by the grand jury, and returned according to the name he gives himself. 2 *Hale,* 176.

It is said that no person indicted can take any advantage of a mistaken surname in the indictment, notwithstanding such surname hath no manner of affinity with its true one, and he was never known by it. 2 *Haw. c.* 25. § 68. *et seq.* 2 *Hale,* 176.

In trespass against several, one cannot plead the misnomer of his companion. *Bro. Abr. tit. Misnom. pl.* 10. 59.

Addition; *alias dictus.* *Additions shall be made.*] The addition, as well of the estate, degree, or mystery, as the town, hamlet, or place, ought by force of this act to be alleged in the first name; for an addition after

the *alias dictus* is ill; as, for instance, where the indictment was against 'W. R. *otherwise called* W. R. *of* H.' for without the *alias dictus* there is no addition of the vill.; and if the party be not sufficiently named in the first part, the *alias* cannot aid or help it. 2 *Inst.* 669. 3 *Salk.* 20. *Vide* post. p. 51.

Several defendants; how their additions shall be set forth.

Where there are several defendants of different names and the same addition, it is safest to repeat the addition after each of their names, applying it particularly to every one of them. 2 *Haw. c.* 23. § 106.

Father and son.

Where a father hath the same name and the same addition with a defendant, being his son, the action is abateable, unless it add the addition of *the younger* to the other additions; but where the father is the defendant, it is said that there is no need of the addition of *the elder.* 2 *Haw. c.* 23. § 106. But see in the case of an indictor, *R.* v. *Peace*, 3 *B.* & *A.* 579. post. p. 59.

So if the son be *in custodia mareschalli*, and so declared against, the count may be good without the addition of *younger*, unless the father of the same name and additions be also in the custody of the marshal; for in these cases, a distinction must be made by some farther description. 2 *Haw. c.* 23. § 106. *Lepiot* v. *Browne*, 1 *Salk.* 7.

Dignities.

Estate or degree.] In legal understanding these two words are of one signification, and do extend to persons of nobility, of dignity, and under the degree of nobility and dignity, as yeomen, &c. and do extend as well to the clergy as to the temporality, and to graduates and degrees in universities in any kind of profession. 2 *Inst.* 666.

Baronet.

In the name of dignities, my Lord *Coke* includes *Baronets:* and in *Cro. Car.* 371. is a case where sir *H. F. baronet* was indicted by the name of sir *H. F. knight:* being arraigned, he said he was never knighted; and the indictment was held not sufficient: he was then indicted *de novo*, by the name of sir *H. F.* baronet, and pleaded *not guilty:* and no objection made to the addition of baronet. Hence it seems to be a good name of addition.

Esquire.

Esquire is a good addition. And the eldest sons of peers, in the lifetime of their fathers, though frequently titular lords, yet are only esquires. So also the younger sons of peers, and their eldest sons in perpetual succession. Also the eldest sons of knights, and their eldest sons. There are also esquires by virtue of their office as justices of the peace, and others who bear any office of trust under the crown. (*a*) 1 *Blac. Com.* 405.

Foreign dignities.

And it seems clear, that no one can be well described by the addition of a temporary dignity of any other nation besides our own; because no such dignity can give a man an higher title here than that of an esquire. 2 *Haw. c.* 23. § 109.

Peers, not of parliament.

All dukes, marquises, earls, viscounts, and barons of other nations, or which are not lords of the parliament of England, are named *armigeri*, if they be no knights; and if *knights*, then they are named *milites.* 2 *Inst.* 67.

(*a*) Mr. *Christian*, in his notes to *Blackstone*, says, "I cannot but think that this is too extensive a description of an esquire, for it would bestow that honour upon every exciseman and custom-house officer; it probably ought to be limited to those only who bear an office of trust under the crown, and who are styled esquires by the king in their commissions and appointments; and all I conceive who are once honoured by the king with the title of esquire, have a right to that distinction for life." 1 *Blac. Com.* 406. n (19.)

Clerk is a good addition to a clergyman; and he that hath taken any degree in either of the universities may be named by that degree. 2 *Inst.* 668. 1 *Blac. Com.* 405. Clerk.

Gentleman and *gentlewoman* are good additions. And as for gentlemen, says sir Thomas Smith, they be made good cheap in this kingdom: for whosoever studieth the laws of the realm, who studieth in the universities, who professes liberal sciences, and (to be short) who can live idly, and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called Mr. Such-a-one, and shall be taken for a gentleman. 1 *Blac. Com.* 406. Gentry.

Yeoman is a good addition; under which denomination are comprehended those who have freehold lands of 40*s.* a-year, and thereby heretofore could serve upon juries, and can yet vote for knights of the shire, and do any other act where the law requires one that is a *good and lawful man.* 1 *Black. Com.* 406. Yeomen.

This degree is applied only to the man, and not to the woman. 2 *Inst.* 668.

Labourer is a good addition, and in common use; for a trader may be sued either by his degree or mystery. 8 *Mod.* 51, 52. 1 *Str.* 556. 2 *Str.* 816. 2 *Ld. Raym.* 1541. But *labourer* is not a good addition for a woman, and an indictment will be quashed upon exception to such addition. *Reg.* v. *Franklyn*, 2 *Ld. Raym.* 1179. Labourer.

Widow or *singlewoman*, or (as some say) *wife* of such-a-one, are all of them good additions of the estate or degree of a woman; but no such-like addition is good for the estate and degree of a man. Also *spinster* is a good addition of a woman. 2 *Haw.* c. 23. § 111. Widow, &c.

Citizens and burgesses are too general for additions within this act. 2 *Inst.* 668. Citizens.

Or mystery.] This includeth all lawful arts, trades, and occupations, as tailor, merchant, mercer, parish-clerk, school-master, husbandman, labourer, and the like. 2 *Inst.* 668. Mystery.

But servant, groom, or farmer, are not additions within this act, because they are not of any mystery. And chamberer, butler, pantler, or the like, are additions of offices, and not of any mystery or occupation. 2 *Inst.* 668. Servants.

Nor are the following additions sufficient; extortioner, maintainer, thief, vagabond, heretic, and such like. 2 *Haw.* c. 23. § 115.

If a man hath divers arts, trades or occupations, he may be named by any of them; but if a gentleman by birth be a tradesman, he shall not be named by his trade, but by the degree of gentleman, because it is worthier than the addition of any mystery. And in general a man shall be named by his worthiest title of addition. 2 *Inst.* 668, 669. Which shall be set forth of two additions.

In case of an *alias dictus*, such addition must be applied to the first name; for if it be applied to that which comes under the *alias dictus* only, and not to the first name, the fault will be fatal; and it is so great a fault to put no addition to the first name, that where several are indicted, such an omission, in respect of one of them, makes the indictment vicious as to all. 2 *Haw.* c. 25. § 70. *Semple's case*, 1 *Leach*, 420. *Ante p.* 49, 50. *Alias dictus.*

And of the towns or hamlets.] If there be two towns in a county Addition of place.

of the same principal name, with different additions to distinguish them from one another, as *Great Dale* and *Little Dale*, or *Upper Dale* and *Lower Dale*, and the defendant named only of the principal town without any addition, as of *Dale* only, the defendant may plead that there are two *Dales* in the same county, and none without an addition. But if there be two towns of the same name in a county, without any addition to distinguish them, it may be sufficient in such case to name the defendant generally of either of such towns, without adding any thing to distinguish it from the other. 2 *Haw. c.* 23. § 121. 1 *Chitt. Crim. L.* 209.

Hamlet. If the defendant live in a hamlet of a town, it is said to be in the election of the party to name him either of the hamlet or of the the town. 2 *Haw. c.* 23. § 122.

Parish. But the addition of a parish, if there be two or more towns in it, is not good; but if there be but one town, the addition of parish is good; and a parish shall be intended to contain no more than one town, unless the contrary be shewn. 2 *Inst.* 669. 2 *Haw. c.* 23. § 120.

Of a wife. The addition of the place of habitation of a wife is sufficiently shewn, by shewing that of the husband; because it shall be intended that the wife lives where the husband does. 2 *Haw. c.* 23. § 124.

Place. *Or places.*] If the defendant live in a place known by a special name, and lying out of any town or hamlet, he may be well named of such place: but if he live in any place known within a town or hamlet, it is said to be safest to name him of the town or hamlet. 2 *Haw. c.* 23. § 123.

Of which they were or be.] The addition of the estate, degree, or mystery, ought to be as the defendant was of at the day of the indictment brought, and not *late* of such a degree or mystery; but it is a good addition to name the defendant *late* of such a town or place, because men do often remove their habitation. 2 *Inst.* 670.

So in the case of Lord *Balmerino*, after the rebellion in the year 1745, the indictment charged that *Arthur* Lord *Balmerino*, *late of the city of Carlisle, in the county of Cumberland*, did so and so; Lord *Balmerino* objected that this was no title belonging to him; upon which the *Lord High Steward* informed him, that these words were not made part of his title, but only the addition of place which the law for good reasons requires to be inserted by way of description of defendants in all indictments, and is most commonly taken from that place where the crime is by such indictment charged to have been committed. *Lord Balmerino's Trial*, 18 *Howell's St. Tri.* 461.

Shall be void.] This being a judgment in law, is interpreted to be made void by a writ of error, or by the plea of the party coming in upon a *capias utlagatum*; for though the statute saith they shall be void, yet they are but voidable by a writ of error or plea. 2 *Inst.* 670.

How writ shall abate for want of addition. *By the exception of the party.*] But if a trader be sued by his degree, the writ shall not abate, unless he shew that he has a higher degree. *Horsepool* v. *Harrison*, 1 *Str.* 556. *Smith* v. *Mason*, 2 *Str.* 816. 2 *Lord Raym.* 1541.

Defendant must take the exception, in time. So if the defendant appear upon process, and plead, taking no advantage thereof by exception, he hath lost the benefit thereof: but it seemeth that the bare appearance of the party,

without plea, doth not salve the want of a good addition. 2 *Haw.* c. 23. § 125.

Plea to plea of misnomer.

To a plea of misnomer (which may be pleaded *ore tenus*) to an indictment, the clerk of arraigns may, in behalf of the crown, reply that the prisoner is known as well by the one name as the other; and if the jury find for the crown, the prisoner may plead over to the indictment. *Dean's case*, 2 *Leach*, 476.

A misnomer of a *surname* may also be pleaded to an indictment, as that he was always called and known by the surname of *Shakespeare*, and not by the name of *Shakepear*. *R.* v. *Shakespeare*, 10 *East*. 83.

Second indictment.

But if an indictment of a capital crime be abated for a misnomer of the defendant's christian name, the court will not dismiss him, but cause him to be indicted *de novo* by his true name, and arraign him again on such new indictment: for regularly a defendant shall not be dismissed for an insufficiency in an indictment, or an appeal for a capital crime; but that as he that pleads a misnomer of either his surname or christian name must in the plea set forth what his true name is, he thereby utterly concludes himself, and if the grand jury be not discharged, the indictment may presently be amended by the grand jury, and returned according to the name he gives himself. 2 *Hale*, 176.

Plaintiff obtaining a dignity.

Anciently, if a plaintiff gained a new name of dignity, hanging a writ, he made it abateable; but this inconvenience was remedied by 1 *Ed.* 6. *c.* 7. § 3. by which it is enacted, That if any plaintiff, in any manner of action, shall be made a duke, archbishop, marquis, earl, viscount, baron, bishop, knight, justice of either bench, or serjeant-at-law, depending the same action, such action for such cause shall not be abateable or abated.

How the addition shall be set forth.

In indictments of treason, felony, &c. against the greater nobility, (dukes, marquises, earls, viscounts, and barons,) the estate and degree is named first, and after the town and county: as *Edwardus Dux de Buckingham nuper de N. in com' Glouc'.* And so it is when one is named of a city, which is a county of itself, the like order is observed. *J. S. pannarius de London in com' civitatis London.* But in case of the lesser nobility, and all under them, the town and county are named before the addition. 2 *Inst.* 669.

Also an indictment naming the defendant by two christian names is not good, as where one was indicted by the name of *Elizabeth N.* alias *Judith H.* 1 *Ld. Raym.* 562.

Of the county.

In the county aforesaid.] If there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at such a place *in the county aforesaid* vitiates the indictment, because two counties are named before, and therefore it is uncertain to which it refers. *Cro. Cir. c.* 36. See *R.* v. *Holbeck in Leeds*, 4 *T. R.* 778.

Misnomer of one, where several are joined.

If several persons be indicted for one offence, *misnomer* or want of addition of one quashes the indictment only against him, and the rest shall be put to answer; for they are in law as several indictments. 2 *Hale*, 177.

And it is the common practice, where an indictment is insufficient, while the grand jury is before the court, to amend it by their consent in a matter of form, as the name or addition of the party, or the like. 2 *Haw. c.* 25. § 98.

Not having God before his eyes, but being moved and seduced by

the instigation of the devil.] I do not find it asserted by anya u-thority that these words are necessary in an indictment.

§ IX. (3.) Of the Allegation of Time, &c.

Time. *On the · · day of - · in the · - year of the reign, &c.*] The averment of time is altogether formal, since it is unnecessary to prove the offence to have been committed at the time alleged in the indictment, unless some time be limited for the prosecution, or time itself be material to the constitution of the offence; these averments, therefore, convey, in general, little of information either to the defendant or his judges. It is nevertheless a general rule, that the time and place of every material fact must be plainly and consistently alleged; and such a degree of precision does the law exact in this respect, that an uncertainty or incongruity in the description of time and place will vitiate the indictment. 1 *Stark. C. P.* 54. *and the authorities there cited.* No indictment can be good without precisely shewing a certain *day* of the material facts alleged in it. 2 *Haw. c.* 25. § 77.

Night. And if the offence be done in the night, before midnight, the indictment shall suppose it to be done in the day before; and if it happen after midnight, then it must say it was done the day after. *Lamb b.* 4. *c.* 5. *p.* 492.

Year. Although the day be inserted, yet if the *year* is not likewise inserted, the indictment is insufficient. 2 *Hale*, 177.

Year of the king. It is most regular to set forth the year, by shewing the year of the king; yet this may be dispensed with for special reasons, if the very year be otherwise sufficiently expressed. 2 *Hale*, 177. 1 *Chitt. Crim. L.* 217.

Year set out by inference. And if it say, on such a day last past, without shewing in what year, that is good enough; for the certainty may be found out by the style of the sessions. *Lamb.* 491.

But though the day or year be mistaken in the indictment, yet if the offence were committed in the same county, though at another time, the offender ought to be found guilty. 2 *Hale*, 179.

It is best in indictments to set down the times as truly as can be, though it be not of absolute necessity to the defendant's conviction. 2 *Hale*, 179.

It is not necessary that the time should be laid according to the truth; for if it be stated previous to the finding of the indictment, and the place be within the county, or the extent of the court's jurisdiction, a variance between the indictment and evidence in the time when the offence was committed will not be material. *Keb.* 16. 2 *Inst.* 318. *Archbold's Crim. Pl. & Ev.* 14.

The day. If the day laid be uncertain or impossible, or if it make the indictment repugnant to itself, it is void.—But if the day laid be such as may be made certain, or be a day known, it will be good, though not laid expressly. 2 *Haw. c.* 25. § 77.

If divers offences be laid to have been committed on divers days between such a day and such a day, it is utterly bad. 2 *Haw. c.* 25. § 82.

Adtunc & ibidem. In indictments for assaults there need not be either a repetition of the time, or a reference to it by the word *adtunc*, as the time first laid will be connected to all the subsequent facts.

But in indictments for felony it is otherwise, and especially where the crime consists of a combination of facts; as in murder, which

consists of the assault and stroke; and in roberry from the person, and in other cases. 2 *Hale*, 178.

Indictment in the time of one king shall serve in the time of another, and the offender shall be arraigned upon it. 14 *Vin. Abr. tit. Indictment.* (*H.* 10.) *pl.* 5.

And this the rather, because the jury are to find the indictment upon their oaths. *Dalt. c.* 184.

But where an indictment charges a man with a bare omission, as not scouring such a ditch, it is said that it needs not shew any time because it affirmeth a present evil. 2 *Haw. c.* 25. § 79.

Upon which ground, namely, because the jury are sworn to present the truth, it is best to lay all the facts in the indictment as near to the truth as may be, and not to say, in an indictment for a small assault (for instance), wherein the person assaulted received little or no bodily hurt, that such an one, *with swords, staves, and pistols, beat, bruised, and wounded him, so that his life is greatly despaired of:* nor to say in an indictment of an highway being obstructed, that the king's subjects cannot go thereon, *without manifest danger of their lives;* and the like. Which kind of words, as they are not at all necessary, so they may stagger an honest man upon his oath to find the fact as so laid.

At the hour of nine in the afternoon of the same day.] But it is not necessary to mention the *hour* in an indictment. 2 *Haw. c.* 25. § 76., and if it be stated, no exception is allowed to it. *Combe* v. *Pitt*, 3 *Burr.* 1434. *Clarke's Ca.* 1 *Bulstr.* 203. The hour.

Excepting in cases of burglary, where it must be laid for the purpose of shewing that the offence was in the night-time.

In short, every material fact which is issuable and triable must be laid with time and place. It must be laid with a *venue* for the sake of trial; and wherever a *venue* is necessary, time must also be mentioned. 5 *T. R.* 620.

With force and arms.] By stat. 37 *H.* 8. *c.* 8. it is enacted, that whereas it hath been commonly used in indictments to put in the same words *vi & armis*, and in divers of the same indictments to declare the manner of the force and arms, *viz. baculis, cultellis, arcubus & sagittis*, or such like, where in truth the parties had no manner of such weapons at the time of the offence committed, therefore for the future these words or such like shall not of necessity be put in any inquisition or indictment. Vi et armis.

But yet where such words are proper and pertinent, it is safe and advisable to insert them, if it be to no other purpose than to aggravate the offence. 2 *Haw. c.* 25. § 91.

§ IX. (4.) Of the Allegation of Place.

At Appleby *aforesaid in the county aforesaid.*] No indictment can be good, without expressly shewing some *place* where the offence was committed, which must appear to have been within the jurisdiction of the courts and laid in a manner free from all repugnancy. 2 *Haw. c.* 25. § 83.

But a mistake of the place will not be material upon the evidence, on not guilty pleaded, if the fact be proved at some other place in the same county. 2 *Haw. c.* 25. § 84.

And it is not sufficient that the county be expressed in the margent, but the vill where the offence was committed must be

alleged to be in the county named in the margent, or *in the county aforesaid*, which seems to be sufficient where but one county is named before; but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 *Hale*, 180. 2 *Haw. c.* 25. § 34.

The fact must be laid in some place whence a visne may come; and a visne may come from a ward, parish, hamlet, burgh, manor, castle, or even a forest, or other *place known* out of a town: but it cannot come from a thing incorporeal, and therefore *not* from a *liberty*.

Query, Whether it be now necessary in an indictment for felony to lay a parish within the county?

In a case at *Monmouth Sum. Ass.* 1808, the prisoner's counsel proved that there was no such parish in the county of *Monmouth* as the parish of *Saint Mary*'s laid in the indictment. It was contended on the other side that it is no longer necessary in such an indictment (*a*) to lay any parish as the jury are to come from the body of the county. *Lawrence* J. said he would save the point for the opinion of the judges. The prisoner was acquitted on the merits. *Rex* v. *Phillips*, 3 *Campb.* 77.

R. v. *Leadbeater*, *Staffordshire Sum. Ass.* 1818. *MS.* The indictment charged the burglary and larceny to have been committed in the parish of *Aldrewas*, *Com. Staff.* Upon cross examination of one of the witnesses for the prosecution, it appeared that there was no such parish as *Aldrewas* within the county of *Stafford*, the parish in which the offence was committed being *Alrewas.*—*Garrow* B. held the indictment insufficient and directed an acquittal upon the authority of a case reserved from the western circuit, and cited by *Campbell* (*Amicus Curiæ*,) in which the judges held (notwithstanding the doubt expressed by *Lawrence* J. in *R.* v. *Phillips*, *supra*,) that it is necessary in every indictment to state a parish or vill within the county, *and that upon proof that there is no such parish within the county as is laid in the indictment, the prisoner must be acquitted.*

If the offence be laid in *London* generally, it will be too general, because of its largeness: there must be some parish stated, with some addition, (as *St. Mary*, *Wood Street*,) but the ward need not be stated, because a ward is in *London* as a hundred is in a county, and the hundred need not be stated. 2 *Haw. c.* 23. § 92. *Sid.* 325. *Mackalley's Case*, 9 *Rep.* 66. *b.*

The mere name of the place alone without the description will be bad: as "late of *W.* in the county of *B.* with force and arms at the parish aforesaid" is bad: *W.* not having been described as a parish; and no other parish having been before laid. *R.* v. *Matthew*, 5 *T. R.* 162.

59 G. 3. c. 27. By stat. 59 *G.* 3. *c.* 27. after reciting, "that whereas felonies "are frequently committed on board vessels employed in carrying "and conveying goods, wares, and merchandise in or upon "canals, navigable rivers, and inland navigations, in various parts "of the U. K., as well by breaking open the casks and packages "containing such goods, wares, and merchandise, as in various "other ways: and whereas such felonies frequently remain un-"detected until the arrival of such vessels at the places of "their destination; and in consequence of such canals and navi-"gations passing through several counties forming the boundaries

(*a*) This was on Ld. *Ellenborough*'s Act, 43 G. 3. c. 58.

59 G.3. c.27.

" of counties on each side or bank, it can seldom be known within
" what county such felonies may have been actually committed,
" and offenders frequently escape unpunished from defect of
" proof that the felony with which they are charged was actually
" committed within the county in which such offenders may be
" indicted :" for remedy thereof it is enacted, "that from and
" after the passing of this act, in any indictment for any felony
" committed on board any barge, boat, trow, or other vessel what-
" ever, employed or used in carrying or conveying goods, wares,
" and merchandise, or in which any such goods, wares, or mer-
" chandise shall be, in or upon any canal, navigable river or
" inland navigation, in any part of the U. K. of *G. B.* and
" *Ireland,* it shall be sufficient to allege that such felony was
" committed within any county or city through any part whereof
" such boat, barge, trow, or other vessel shall have passed in
" the course of the voyage or journey during which such felony
" shall have been committed; and in cases wherein the sides or
" banks of any navigable river, canal, or inland navigation, or the
" centre thereof, shall constitute the boundary of any two counties
" or cities, it shall be sufficient to allege that such felony was
" committed in either of the said counties or cities through which
" or any part thereof such boat, barge, trow, or other vessel shall
" have passed in the course of the voyage or journey during
" which such felony shall have been committed; and every such
" felony shall and may be inquired of, tried, and determined
" in the county or city within which the same felony shall be so
" alleged to have been committed; and all and every person and
" persons who shall be convicted of any such felony so to be
" inquired of, tried, and determined as aforesaid, shall be subject
" and liable to all such pains of death, and other pains, penalties
" and forfeitures, as such person or persons convicted of such
" felony would have been subject and liable to in case such
" felony had been inquired of, tried, and determined in the county
" in which the same felony was actually committed:" provided
always, that nothing herein contained shall extend or, or be con-
strued to extend, to affect the jurisdiction of the high court of
admiralty, or of any commission for the trial of offences under
stat. 28 *Hen* 8. *c.* 15. "intituled *For Pirates.*" See tits. Admiralty,
Vol. I. Ships, Vol. V.

Felonies on navigations may be prosecuted in any county through which the navigation passes.

Persons so tried and convicted to be subject to like pains and penalties as if tried in the county where fact committed.

59 G.3. c.96.

By stat. 59 *G.* 3. *c.* 96. after reciting, that "whereas felonies
" are frequently committed on stage coaches, stage waggons,
" stage carts, and other such carriages, employed in carrying and
" conveying goods, wares, and merchandise, travelling on the
" several highways in various parts of the U. K., as well by breaking
" open the casks and packages containing such goods, wares, and
" merchandise, as in various other ways: and whereas such
" felonies frequently remain undetected until the arrival of such
" carriages at the place of their destination, and in consequence
" of such highways leading through several counties, it can sel-
" dom be known within what county such felonies may have been
" actually committed, and offenders frequently escape unpunished
" from defect of proof that the felony with which they are charged
" was actually committed within the county in which such
" offenders may be indicted;" for remedy thereof, it is enacted,
" that from and after the passing of this act, in any indictment
" for any felony committed on any stage coach, stage waggon,

Indictments for felonies committed on stage coaches, &c. how to be laid.

59 G.3. c.96. "stage cart, or other such carriage whatever, employed or used "in carrying or conveying goods, wares, and merchandise, or in "which any such goods, wares, or merchandise shall be, in or "upon any highway in any part of the U. K. of *G. B.* and *Ire-* "*land*, it shall be sufficient to allege that such felony was com- "mitted within any county or city through any part whereof such "stage coach, stage waggon, stage cart, or other such carriage "shall have passed in the course of the journey during which "such felony shall have been committed; and in all cases where "any highway shall form the boundary of any two counties, it "shall be sufficient to allege, that such felony committed as "aforesaid was committed in either of the said counties through "which or any part whereof such stage coach, stage waggon, "stage cart, or other such carriage shall have passed in the course "of the journey during which such felony shall have been com- "mitted; and every such felony shall and may be inquired of, "tried, and determined in the county or city within which the "same felony shall be so alleged to have been committed; and "all and every person and persons who shall be convicted of any "such felony so to be enquired of, tried, and determined as "aforesaid, shall be subject and liable to all such pains of death, "and other pains, penalties, and forfeitures, as such person or "persons convicted of such felony would have been subject and "liable to, in case such felony had been inquired of, tried, and "determined in the county in which the same felony was actually "committed."

How indictments shall be laid for felonies committed on the boundaries of counties.

§ 2. "And whereas felonies are sometimes committed on or so "close to the boundaries of two or more counties, that the offend- "ers escape unpunished from the defect of proof, that the felony "with which they are charged was actually committed within the "county in which such offenders may be indicted;" it is there- fore enacted, "that from and after the passing of this act, in any "indictment for any felony committed on the boundary or boun- "daries of two or more counties, or within the distance of five "hundred yards of any such boundary or boundaries, it shall be "sufficient to allege that such felony was committed in either or "any of the said counties; and every such felony shall and may "be inquired of, tried, and determined in the county within which "the same felony shall be so alleged to have been committed; and "all and every person and persons who shall be convicted of any "such felony so to be inquired of, tried, and determined as afore- "said, shall be subject and liable to all such pains of death, and "other pains, penalties, and forfeitures, as such person or persons "so convicted of such felony would have been subject and liable "to, in case such felony had been inquired of, tried, and deter- "mined in the county in which the same felony was actually "committed."

Stolen property of partners.

Where the goods stolen are the property of partners, they may be described as the goods and chattels of any one or more of the partners. See *Stat.* 1 *G.*4. *c* 102. *tit.* Larceny, § 1. *post.* So also where minerals, timbers, iron, or other materials are stolen from mines, the property of any mining company. See *Stat.* 56 *G.* 3. *c.* 73. *post.* *R.* v. *Robinson*, *Holt. C. N. P.* 595. *Durh. Ass.* 1817.

Laying property in persons unknown.

When property is stated in one count to belong to certain persons, naming them specifically, but in another count to belong to *persons unknown*, and the prosecutor, by defect of

evidence, could not prove the christian names of the persons as described in the first count; *Richards* C. B. held, that he could not recur to the second count, which describes the property as belonging to *persons unknown;* for it appeared that the owners were known, and might have been ascertained by the prosecutor: but the evidence being defective on this point, the prisoner was acquitted.

§ IX. (5.) The Description of the Inditor, or Person inditing.

In and upon one George Harrison.] Wherever the person injured is known to the jurors, his name ought to be put in the indictment. 2 *Haw. c* 25. § 71.

But if they know not his name, an indictment for the murder of a person unknown, or for stealing the goods of a person unknown, is good. 2 *Hale*, 181.

Also there is no need of an addition of the person upon whom the offence is committed, unless there be a plurality of persons of the same name; neither then is it essential to the indictment, though sometimes it may be convenient for distinction sake to add it. 2 *Hale*, 182.

On an indictment for assaulting *A.*, if there are two persons, father and son, named *A.*, and the assault is upon the son, it need not be stated in the indictment that the assault was upon *A.* the younger.

Indictment for assaulting *Elizabeth Edwards.* It appeared that there were mother and daughter of that name, and that the assault was upon the daughter; it was urged that the description *Elizabeth Edwards*, without addition, applied only to the mother, but *Holroyd* J. at the trial, and the court of K. B. afterwards, thought otherwise, and defendant was convicted and sentenced. *R.* v. *Peace*, 3 *B.* & *A.* 579.

In naming the person upon whom an offence was committed, it is not necessary to give him an addition of inferiority to distinguish him from any other person of the same name. 3 *B.* & *A.* 579.

In the peace of God and of our said lord the king then and there being.] It is usual to allege this, but not necessary, and possibly not true, for he might be breaking the peace at the time. 2 *Hale*, 186.

§ IX. (6.) The Description of the Offence.

The aforesaid George Harrison *not having any weapon then drawn, nor the aforesaid* George Harrison *having first stricken the said* John Armstrong.] An indictment grounded upon an offence made by act of parliament must by express words bring the offence within the substantial description made in the act of parliament; and those circumstances mentioned in the statute to make up the offence, shall not be supplied by the general conclusion *against the form of the statute.* 2 *Hale*, 170.

Act of parliament.

And so it is, if an act of parliament oust clergy in certain cases, as murder *of malice aforethought*, robbery *in or near the highway*, though the offences themselves were at common law; yet because at common law within clergy, they shall not be ousted out of clergy,

though convicted, unless these circumstances, as of *malice aforethought*, or *near the highway*, be expressed in the indictment. 2 *Hale*, 170.

But there is no necessity in an indictment on a public statute to recite such statute; for the judges are bound *ex officio* to take notice of all public statutes. 2 *Haw. c.* 25. § 100.

Although the indictment need not recite a general penal statute, yet it must bring the fact within the express prohibition of the statute, otherwise the conclusion *contra formam statuti*, and the implication thereof will not aid the indictment, but it will be insufficient. 2 *Hale*, 192.

Varying from the words of the statute.

Yet if the prosecutor take upon him to recite it, and materially vary from a substantial part of the purview of the statute, and conclude *against the form of the statute aforesaid*, he vitiates the indictment. 2 *Haw. c.* 25. § 100. *Aliter*, where the mistaken words may be rejected as surplusage. *R.* v. *Howarth*. 3 *Stark*, 27. *ante tit.* Cheat.

Also it seems to be generally agreed that a misrecital of the place or day at which the parliament was holden vitiates an indictment. 2 *Haw. c.* 25. § 104.

And it hath been adjudged that a misrecital of the title of a statute is fatal. 2 *Haw. c.* 25. § 101.

There is no need to allege in an indictment that the defendant is not within the benefit of the provisoes of the statute; although the same may be necessary in a *conviction;* for since no plea can be admitted to a conviction, and the defendant can have no remedy against it, but from an exception to some defect appearing in the face of it, and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty. 2 *Haw. c.* 25. § 113. 2 *Hale*, 170, 171.

And even in a conviction, where the benefit is given by a proviso in the statute subsequent to the enacting clause, it is not necessary to negative the benefit. 2 *Str.* 1101.

Feloniously.

Feloniously did make an assault.] There are several words of art which the law hath appropriated for the description of the offence, which no circumlocution will supply, as *feloniously*, in the indictment of any felony; *burglariously* in an indictment of burglary; and the like. 2 *Hale*, 184.

And if a man be indicted that he *stole*, and it is not said *feloniously*, this indictment imports but a trespass. 2 *Hale*, 172.

Weapon.

With a certain sword drawn.] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning or strangling, it doth not maintain the indictment upon evidence. 2 *Hale*, 185.

Its value.

Of the value of five shillings.] Regularly it ought to set forth the price of the sword or weapon, or else say of no value; for the weapon is a deodand forfeited to the king, and the township shall be charged for the value, if delivered to them; but this seems not to be essential to the indictment. 2 *Hale*, 185.

The hand in which it was.

Which he the said John Armstrong *in his right hand then and there had and held.*] It must shew in what hand he held his sword. 2 *Hale*, 185.

The manner of the offence.

In and upon the right side of the belly near the short ribs of him the said George Harrison.] There must be a *certainty* of the offence committed, and nothing material shall be taken by in-

tendment or implication; but the special manner of the whole fact ought to be set forth with certainty. 2 *Haw. c.* 25. § 57.

In the case of murder it ought to shew in what part of the body the person was wounded; and therefore, if it be on his arm or hand, or side, without saying whether right or left, it is not good. 2 *Hale*, 185.

In stating the substance of the fact, there must be no repugnancy in the material part; but if there be enough well laid to maintain the indictment, judgment may be given on so much as is good. 2 *Haw. c.* 25. § 55. *et seq. Reg.* v. *Ingram & ux.* 1 *Salk.* 384. *Benfield* v. *Saunders*, 2 *Burr.* 985.

Disjunctive allegations.

The offence must not be laid disjunctively, as he murdered or caused to be murdered. 2 *Haw. c.* 25. § 58.

Value of goods stolen.

If theft be alleged in any thing, the indictment must set forth the value of the thing stolen, that it may appear whether it be grand or petit larceny. 2 *Hale*, 183.

What goods.

In like manner, an indictment that the defendant took and carried away such a person's goods and chattels, without shewing what in certain, as one horse, one cow, is not good. 2 *Hale*, 182.

Number.

So 20 *sheep and ewes* is bad; it ought to be how many of each sort. 2 *Hale*, 183.

The owner.

The owner should be named: and if the thing stolen be a living thing, it should be named by its name only; if it be a dead thing, it should also be laid *bona et catalla*. *Lamb. b.* 4. *c.* 5. 476.

R. v. *Robinson*, *Durham Sum. Ass.* 1817. 1 *Holt's Rep.* 595. On an indictment, laying the property in persons by name, and in another count in persons *unknown*, the evidence failed in shewing such ownership; but it appeared that it might have been easily ascertained; *Richards* C. B. would not allow the prosecutor to have recourse to the second count, and directed an acquittal. His Lordship cited a case at *Chester* before Lord *Kenyon*, where the property was laid as belonging to a person unknown; but upon the trial, it was clear that the owner was known, and might easily have been ascertained by the prosecutor. Lord *Kenyon* directed an acquittal.

As to the value, *see* tit. Larceny, § 1. post.

Charge must not be too general.

An indictment that the defendant is a common highwayman, a common defamer, a common disturber of the peace, and the like, is not good; because it is too general, and contains not the particular matter wherein the offence was committed. 2 *Hale*, 182.

It must be special.

In like manner an indictment for divers scandalous, threatening, and contemptuous words, spoken of a justice of the peace, is not good; it ought to set forth the words in special. 2 *Str.* 699.

But in certain excepted cases, it is sufficient to state generally that the defendant is so and so, without specifying any particular instances; as in a charge of being a common scold, a common barrator, or of keeping a common bawdy-house. 2 *Hawk. c.* 25. § 57. 59.

And positive, not by recital.

An indictment for disobeying an order of justice must find positively that such an order was made, and not by way of recital. *that whereas*——. 2 *Ld. Raym.* 1363.

But in an indictment on a conviction, it is not necessary to set forth the conviction at large, but only shortly that such a one was before such and such justices convicted, according to the form of the statute, and thereupon a warrant was issued, &c. 2 *Ld. Raym.* 1196.

Adtunc & ibidem. *Then and there did feloniously stab and thrust.*] In an indictment it is best, and often necessary, to repeat the time and place to the several parts of the fact. 2 *Hale*, 178.

Thus in an indictment of murder or manslaughter, as well the day and place of the stroke or other act done as of the death must be expressed; the former, because the escheat or forfeiture of lands relate thereto; the latter, because it must appear that the death was within the year and day after the stroke. 2 *Hale*, 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches.] Regularly the length and depth of the wound is to be shewn, but this is not necessary in all cases; as where a limb is cut off, so it may be also a dry blow. 2 *Hale*, 186.

But though the manner and place of the hurt and its nature be requisite, as to the formality of the indictment, and it is fit to be done as near the truth as may be, yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is sufficient to maintain the indictment. 2 *Hale*, 186.

In the construction however of statutes that take away the benefit of clergy, the law requires that the fact laid in the indictment should be strictly proved. 2 *East's P. C.* 647. *R.* v. *Pike*, 1 *Leach*, 317.

§ IX. (7. a.) The Conclusion of an Indictment at Common Law.

Contra pacem. *Against the peace of our said lord the king.*] An indictment, without concluding against the peace, is insufficient, though it be but for using a trade not having been an apprentice; for every offence against the statute is against the peace, and ought so to be laid. 2 *Hale*, 188.

Our lord the king. Also an indictment that concludes against the peace, and saith not *of our lord the king*, is insufficient. 2 *Hale*, 188.

It seems *domini regis*, in all indictments; and the king's name must be of that king in whose time the offence was committed; and if the offence be begun under one king, and continued under his successor, and it be laid against the peace of both kings, it seems good; but if it conclude only against the peace of the successor, it is bad, as the commencement is shewn to have been under the first; and it may be laid against his peace alone. With respect to the omission of the words "in contempt of the king," there are precedents both ways. 2 *Haw. c.* 25. § 92, 93. 95. 2 *Hale*, 187, 188. *Yelv.* 66.

An indictment for an offence commited in the time of the *late* king, and concluding against the peace of the *present* king, is not sufficient *R.* v. *Lookup*, 3 *Burr.* 1901.

A *contra pacem* of our said *late* lord the king, where the offence is in the time of the present king, and no other king has been mentioned, is unexceptionable.

An indictment for a rape, stated to have been committed 9th of *March*, 1 G. 4., concluded against the peace of our said *late* lord

the king. On case, the judges were unanimous that "late" might be rejected, and the prisoner was executed. *R.* v. *Scott, Leicestershire Lent Assizes,* 1820, *before Best* J. *and before all the judges in E. T. following, MS. C. C. R.*

Thomas Cook was convicted before *Thompson* B. at *Lancaster Spring Assizes,* 1810, upon an indictment for stealing bank notes, "against the form of the statute in such case made and provided."—It was moved in arrest of judgment, that the indictment was insufficient for want of charging the offence to have been committed *against the peace.* 2 *Haw. c.* 25. § 92. was relied upon, and also *Lookup*'s case.—On behalf of the prosecution, that part of the same section in *Hawkins* was referred to, where it is stated that *Rastall's* precedents both of indictments of felony and of inferior offences, do as often omit the words "*contra pacem*" as make use of them. And it was further contended, that the charging the offence to have been committed against the form of the statute, imported that it was against the peace. Judgment was respited, and the question submitted to the consideration of the judges, who held the indictment bad. *Rex* v. *Thomas Cook, before all the judges, May* 1810. *MS. C. C. R.* Every indictment must charge the offence to have been done against the peace of the king in whose reign it was committed.

His crown and dignity.] But an indictment need not conclude *against his crown and dignity,* though it be usual in many indictments. 2 *Hale,* 188. Crown and dignity.

If an offence were felony at common law, but a special act of parliament ousts the offender of some benefit that the common law allowed him, when certain circumstances are in the fact, though the body of such indictment must express those circumstances, according as they are prescribed in the statute, yet the indictment need not conclude against the form of the statute. But yet, if it should conclude in such case against the form of the statute, it would not vitiate the indictment, but would be only surplusage. 2 *Hale,* 190.

But on the other side, if an offence be purely at common law; if it conclude *contra formam statuti,* it is insufficient, and shall be quashed, except in the instance above given of clergy. 2 *Hale,* 192.

Therefore an indictment of battery concluding *contra formam statuti,* is insufficient, and shall be quashed. 2 *Hale,* 192.

§ IX. (7. b.) The Conclusion of an Indictment upon the Statute.

And against the form of the statute in such case made and provided.] Regularly, if a statute only make an offence or alter an offence from one crime to another, as making a bare misdemeanor a felony, the indictment for such new-made offence, or new-made felony, must conclude against the form of the statute, otherwise it is insufficient. 2 *Hale,* 192. Where a statute creates an offence.

If an offence be newly enacted, or made an offence of a higher nature by an act of parliament, the indictment must conclude *contra formam statuti.* 2 *Hale,* 189.

But if a man be indicted for an offence, which was at common law, and concludes against the form of the statute, but in truth it be not brought by the indictment within the statute, it shall be quashed, and the party shall not be put to answer it as an offence at common law. 2 *Hale,* 171.

In general, if an indictment conclude *contra formam statuti*, the latter words may be rejected if the indictment be good as an indictment at common law. *Say.* 225.

If an act of parliament, making an offence, be but temporary, and made perpetual by another statute, the indictment concluding against the form of the *statute*, is good. 2 *Hale*, 173.

If the former statute be discontinued, and revived by another statute, the best way is to conclude against the form of the *statutes;* though there is good opinion that it is good enough to conclude against the form of the first statute. 2 *Hale*, 173.

And indeed it seems clear that if a *statute* refer to a former statute, and adopt and continue the provisions thereof, the indictment must conclude against the form of the *statute*. 2 *Haw. c.* 25. § 117. 1 *Saund.* 135. *n.* 3.

But if one statute be relative to another, as where the former makes the offence, and the latter adds a penalty; the indictment ought to conclude against the form of the *statutes*. 2 *Hale*, 173.

If one statute creates an offence, and the other adds a penalty: or if the same offence be prohibited by several statutes: or where a later statute ordains that a former statute shall be executed in a new case not mentioned in the former, the conclusion shall be *contra formam statutorum*. 2 *Haw. c.* 25. § 117.

Where an indictment ought to conclude "*contra formam statuti*" or "*statutorum*."

If one statute subjects an act to a pecuniary penalty, and a subsequent statute makes it felony, an indictment for the felony, concluding *against the form of the statute* is right.

By stat. 34 *G.* 3. *c.* 20. § 9. Having paper in possession with false stamps, subjects to 500*l.* penalty; stat. 49 *G.* 3. *c.* 81. makes it felony. An indictment concluded *contra formam statuti*, and on case, the judges held it right. *R.* v. *Pim, Devonshire Sum. Ass.* 1820, *cor. Burrough J. and before the judges in M. T. following. MS. C. C. R.*

If an offence be at common law, and also prohibited by statutes, the indictment may conclude *contra formam statuti*, or *statutorum*. 2 *Hale*, 191.

§ IX. (7. c.) Conclusion of an Indictment for an Offence which is such both at Common Law and by Statute.

If a man be indicted for an offence which was at common law, and concludes *contra formam statuti*, but in truth it is not brought by the indictment within the statute, it shall be quashed, and the party shall not be put to answer it as an offence at common law. 2 *Hale*, 171.

As if a man be indicted for drawing his dagger in the church upon *J. S. contra formam statuti*, but omits these words, with an intent to strike, the indictment shall be quashed, and the party shall not be put to answer the assault at common law. 2 *Hale*, 171.

If a trespass be made a felony, the indictment must conclude *contra formam statuti*. 2 *Hale*, 189.

If an offence be at common law, and also prohibited by statute, with a corporal or other penalty, yet it seems the party may be indicted at common law, and then, though it conclude not *contra formam statuti*, it stands as an indictment at common

law, and can receive only the penalty, that the common law inflicts in that case. 2 *Hale*, 191.

Thus in case of a *riot*, the indictment need not conclude *contra formam statuti*, though prohibited by acts of parliament under severe penalties. 2 *Hale*, 191.

So in case of perjury. *Ib.*

But otherwise in the cases of indictments for forcible entry, and for forgery. 2 *Hale*, 192.

X. Charges of an Indictment.

By stat. 10 & 11 *W. c.* 23. No clerk of assize, clerk of the peace, or other person, shall take any fee of any person bound over to give evidence against a traitor or felon for the discharge of his recognizance; nor shall take more than 2*s.* for drawing any bill of indictment against any such felon; on pain of 5*l.* to the party grieved, with full costs. And if he draw a bill defective, he shall draw a new one *gratis*, on the like pain. 10 & 11 W. 3. c. 23.

For the drawing of indictments for other misdemeanors not being treason or felony, no fee is limited by any statute; and therefore the same dependeth upon the custom and ancient usage.

XI. Pleading.

When one may plead over.

If a defendant plead misnomer in abatement to an indictment for a misdemeanor, and it is found against him, he cannot afterwards plead the general issue: but final judgment must be given against him. *R.* v. *Gibson*, 8 *East*, 107.

It is otherwise in the case of felony: in such case, he may plead over to the felony. And in all pleas, whether to the writ or in bar by matter of record, or by matter of fact, or both, if the plea do not confess the felony, though his plea be found against him by issue tried, or adjudged against him by the court, yet he shall not be convicted thereon, but plead over to the felony *not guilty*, as well upon an indictment, as upon an appeal, and this *in favorem vitæ*. 2 *Hale*, 239.

It is thought right to insert in this place a short account of the several modes of pleading to an indictment; a thing omitted in former editions of this work, though very fit to be known and understood.

Pleas upon the arraignment are four kinds:

I. *Pleas declinatory of Trial.*
 Sanctuary.
 Clergy.

II. *Pleas in Abatement of the Indictment.*
 1. *Defects arising on the Indictment itself.*
 2. *Defect in Matters of Fact—as misnomer, false addition.*

III. *Pleas in bar of the Indictment.*
 1. *Matter of Record.*
 2. *Mixt of Record and Fact.*

 Matters of record, are—pardons.
 Mixt—1. *auterfoits acquit* }
 2. ——— *attaint* } *of same felony.*
 or convict }

 3. *Convict of another Felony, and had his Clergy.*

IV. *Pleas to the Matter of the Indictment—not guilty.*

Dilatory plea.

In pleading a dilatory plea, defendant must annex an affidavit of the truth of the plea. *R.* v. *Grainger*, 3 *Burr.* 1617.

§ XI. (II. 1.) Defects arising on the Indictment itself.

Abatement.

The same exceptions (arising upon the indictment which would be the grounds of pleading in abatement,) will also be exceptions after the trial in arrest of judgment. 2 *Hale*, 236, 237.

And, as may be seen in the foregoing § (IX.), there are many causes of such pleading in abatement; and generally all manner of uncertainty is good cause of abatement.

The Court will not upon motion quash a bad plea in abatement.

R. v. *Cooke*, H. 1824. 2 *B.* & *C.* 618. To an indictment for a conspiracy, the defendant pleaded the following plea:—"And *Richard Stafford Cooke*, lord *Stafford*, baron *Stafford*, who is indicted by the name of *Richard Stafford Cooke*, late of the parish of *Castle-Church*, in the county of *Stafford*, gentleman, in his own person comes, and having heard the said indictment read, prays judgment of the said indictment, because he says, that on the day of taking the inquisition aforesaid, and long before, he was, and from thence hitherto hath been, and still is, lord *Stafford*, baron *Stafford*, and the state, degree, title, and honour of lord *Stafford*, baron *Stafford*, on the day of taking the inquisition aforesaid, and long before, had and enjoyed, and still has and enjoys. And this, &c." A rule *nisi* had been obtained for quashing this plea, on the ground that it was clearly bad, (*a*) and pleaded for the purpose of delay. On shewing cause, it was urged against the rule, that by quashing the plea, defendant would be deprived of the opportunity of discussing its validity on a writ of error, and *Thomas* v. *Smythies*, 4 *Taunt.* 668. was cited. For the rule, *Com. Dig.* tit. *Indictment*, (H.) was cited to support a position, that in criminal proceedings in general, it is discretionary in the court either to quash a plea on motion, or leave the prosecutor to demur. But *Abbott* C. J. declared there was a great difference between indictments and pleas in this respect; *et per Cur.* it would be much too strong a measure to quash the plea in this case.

§ XI. (II. 2.) Defects in Matters of Fact.

Misnomer.

Indictment of one by the name of *T. D.* Plea by his counsel, *ore tenus*, that his name was *J.* and not *T. D.* Clerk of the arraigns replied on behalf of the crown, that he was known as well by the name of *T.* as by the name of *J. D.*—Issue joined.—The sheriff returned a jury *instanter* to try this issue, and it was found for the crown; upon which the prisoner pleaded over to the felony, *not guilty*. *Dean's Case*, 1 *Leach*, 476.

A person indicted for a misdemeanor may plead that his name is *Shakespeare*, and not *Shakepeare*, for the latter is not *idem sonans*. *R.* v. *Samuel Shakespeare*, 10 *East*, 83.

Misnomer may be pleaded by attorney, as well as in person. *R.* v. *Westby*, 10 *East*, 83. (n.)

(*a*) *Viz.* for not setting out the patent and pedigree: the following authorities were cited; 2 *Hale*, 240. *Co. Litt.* 16. *b.* and note 3. Countess of *Rutland's* case, 6 *Rep.* 53. *Rex* v. *Knollys*, 1 *Ld. Raym.* 10.

In all cases of pleading misnomer, there must be a plea over to the felony. 2 *Hale*, 238.

Omitting the name of dignity is matter of abatement, and of reversal of outlawry. 1 *Show.* 392. *Dethick's Case, Cro. Eliz.* 224. 542.

Duke or not duke; earl or not earl; baron or not baron, shall not be tried by the country, but by record; and the writ testifying the plea pleaded must be shewn because it is a dilatory plea. *Countess of Rutland's Case*, 6 *Rep.* 53. 2 *Hale*, 240.

§ XI. (III.) Pardons.

Pardon is matter of record, and must be pleaded as such, and in bar; letters under the king's sign-manual cannot be pleaded as a pardon; it must be pleaded *sub pede sigilli.* **Pardon.**

One is indicted of felony by the name of *J. E.* yeoman; and the king pardons him by the name of *J. E.* gentleman, all manner of felonies. Held, that the pardon is good, and may be pleaded with an averment, that the said *J. E.* yeoman, and *J. E.* gentleman, are one and the same person. *Keilw.* 58. *A.*

§ XI. (III. 1.) Plea of Auterfoits acquit.

Another plea in bar is *auterfoits acquit de mesme felonie.* It is mixed, for it consists, first, of matter of record, *viz.* the former indictment and acquittal, and before what justices, and whether by verdict or otherwise; and, second, of matter of fact, *viz.* that the prisoner is the same person who was acquitted, and that the fact is the same of which he was acquitted, and is now indicted. 2 *Hale*, 241. **Auterfoits acquit.**

It is a good plea on an indictment of felony to say, that he was before arraigned of the same felony before such and such justices, &c. and was acquitted; and the person so pleading shall vouch the record, for he shall not be compelled to have the record at hand, because his plea is not dilatory, but in bar; and such plea shall be a good bar. *Staundf.* 105. *lib.* 2. *c.* 36.

If the plea be dilatory, the record must be shewn. *Co. Lit.* 127. *b.*

If the second indictment be in *K. B.* and first acquittal were before justices of the peace, or gaol delivery, a writ of *certiorari* will be granted to remove the record before them, and the plea be respited till the acquittal can be removed into the court. 2 *Hale*, 242.

The court may examine proof that it is the same felony, and allow it.

The record must be part of the plea.

An acquittal in any court having jurisdiction is as good a bar as an acquittal in the highest. 2 *Haw. c.* 35. § 10.

Captain Roche was indicted for the murder of *J. H.* at the *Cape of Good Hope.* — Plea *auterfoits acquit de m. f.* before *O. M. B.* provincial fiscal, &c. there. It was moved to charge the jury at once with both issues; but, *per Curiam; non allocatur.* 1 *Leach*, 134.

The matter of fact of the plea is, that he is the same person; and that it is the same felony whereof he was acquitted; which

may be put in issue, or may be confessed by the king's attorney. 2 *Hale*, 243.

When auterfoits acquit is not a good plea.

A bare verdict of acquittal is not enough without judgment *quod eat inde sine die.*

Insufficient indictments.

Unless the first indictment were such as the prisoner might have been convicted upon, an acquittal upon it will be no bar to the second, upon proof of the facts contained in the second indictment. *Vandercombe's Case*, 2 *East's P. C.* 522. 2 *Leach*, 708.

When the law says that *auterfoits acquit* is a good plea, it shall be intended when he is *lawfully* acquitted; and therefore upon a discharge for an insufficient indictment he may be tried again for that offence. — As where one is acquitted upon a trial in a mistaken county. *Vaux's Case*, 4 *Rep.* 45. (*a*). *Wigges' Case*, 46. (*b*). *Staundf. lib.* 2. *c.* 36. 106. (*a*). *Com. Dig.* Indictment (L.)

It must be by verdict upon trial.

So the acquittal must be by verdict upon trial, and a judgment must follow; no discharge by a coroner's inquest, or the special finding by the grand inquest, or judgment reversed, will be good cause for pleading this plea. 2 *Hale*, 246.

But if it be upon erroneous direction of the judge (2 *Inst.* 318.) or erroneous judgment of no felony upon special verdict found, (the judgment being unreversed by writ of error,) it is a good cause for such a plea. 2 *Hale*, 247.

And will be good if the offence be the same.

Though there be a variance as to time, place, or name, yet if the offence be the same, this shall be a good plea, *Cogan's Case*, 1 *Leach*, 448. — *J. C.* was indicted for publishing as true a certain forged will and testament, purporting, &c. The will as in evidence was thus: " *T. G.* do hereby," &c. The will recited in the indictment was " I, *T. G.*" &c. and it was held a fatal variance. — He was subsequently indicted as before, but in reciting the will the pronoun *I* was left out. *Auterfoits acquit* was pleaded, and the former record of acquittal being produced, it was held not to prove the plea; not being legal evidence of his having been acquitted of the same offence, and the prisoner pleaded over not guilty.

Variances of time and place may be helped by the averment that it is one and the same felony.

Accessary.

For the law of *Accessary* and *Principal*, see Vol. I. tit. Accessary.

Plea of *auterfoits acquit*, and a copy prayed of the indictment, on which they alleged their acquittal, and refused by the court; but also it was said the prisoner was entitled to hear the indictments read over very slowly and distinctly. *Vandercombe's Case*, 2 *Leach*, 708.

Auterfoits attaint or convict.

(III. 2.) *Auterfoits attaint de mesme felonie* also is a good plea in bar, notwithstanding there have been a pardon of the attainder and felony. 2 *Hale*, 253.

The sheriff may return a jury *instanter* to try whether the prisoner were *auterfoits convict*, &c. as said; and whether he be the same person that was then tried and convicted. And the record will be proof of the facts of trial and conviction; and the fact of identity must be found by the jury. *Scott's Case*, 1 *Leach*, 401.

There must have been judgment.

(III. 3.) Of the nature of clergy, and the benefits resulting from prayer of clergy, see Vol. I. title Clergy, § II. (5.) *A.* commits several felonies; is convict for one of them, but no judgment of death nor clergy given in evidence; he may be indicted for all those former felonies. 2 *Hale*, 253. Convict and clergy.

But if he were convict, and prayed his clergy, it would be otherwise. *Ib.*

From these several rules and cases, the following rules may be deduced.

1. The party pleading matter of record must specially set out the record.

2. He must shew the record *sub pede sigilli*, or have the record removed into the court where it is pleaded, by *certiorari*; or if it be a record of the same court, must vouch the term, year, and roll; for the record is part of the plea.

3. He must make averment, as the case shall require, that he is the same person, and that it is the same offence.

4. No issue shall be taken upon the plea of *nul tiel* record, because it is pleaded in court; but the king's attorney may have oyer of the record.

5. The averments are issuable.

6. If issues be taken upon them they shall be tried by the jury that is returned to try the person. 22 *H.* 8. *c.* 14.

7. He that pleads these pleas must plead over not guilty to the felony; for if the pleas be found against him, he shall be tried by the country.

To the foregoing pleas in bar the crown may counter plead. Counter pleading.

So also to a prayer of clergy.

And to this counter plea the prisoner may reply.

There may also be a demurrer to the indictment; but this plea is a confession of the indictment, and should be avoided, as the prisoner may have all the advantages of exception to the indictment, either before his plea of not guilty, or after his conviction, and before judgment, as he might have by demurrer, 2 *Hale*, 257. Demurrer.

But if the attorney general demur, and the prisoner join in demurrer, and it be adjudged against the prisoner, he shall plead over to the felony. 2 *Hale*, 257.

Upon a demurrer to an indictment the court must look to the whole record to see whether they are warranted in giving judgment on it: and therefore it is open to objections, as well to the jurisdiction of the court where the indictment is found, as to the subject-matter of the indictment. *R.* v. *John Fearnley*, 4 *T. R.* 316.

In indictment there can be no justification *pleaded. Ib.* 258.

(IV.) The last plea is, *not guilty*, and it consists of two parts: 1. The issue of not guilty, whereunto the clerk joins issue: 2. The putting himself upon his country, when the clerk demands how he will be tried. Not guilty.

And if he fail in either of these, it is in law a standing mute. *Ib.* 258.

§ XII. Acquittal on an Indictment.

By stat. 14 *G.* 3. *c.* 20. Every prisoner charged with any felony or other crime, or as an accessary thereto, who shall on his trial be acquitted, or against whom no indictment shall be found by the 14 G. 3. c. 20. Et vide title "Gaols," Vol. II.

14 G. 3. c. 20. grand jury, or who shall be discharged by proclamation, for want of prosecution, shall be immediately set at large in open court, without payment of any fee to the sheriff or gaoler: but in lieu thereof, the treasurer, or other proper officer of the several counties, or of such districts, hundreds, ridings, or divisions, as are not usually assessed to the county at large, and of such cities, towns corporate, cinque ports, liberties, franchises, and places, as do not pay to the rates of the several counties in which they are respectively situate, shall, on a certificate signed by one of the judges or justices before whom such prisoner shall have been discharged, pay out of the general rate of the county or district such sum as hath been usually paid, not exceeding 13*s*. 4*d*.

But an action cannot be brought by the person acquitted of felony against the prosecutor of the indictment, without obtaining a copy of the record of his indictment and acquittal; which in prosecutions for felony it is not usual to grant, if there is any the least probable cause to found such prosecution upon. For it would be a very great discouragement to the public justice of the kingdom, if prosecutors for felonies, who had a tolerable ground of suspicion, were liable to be sued at law whenever their indictments miscarried. — But an action on the case for a malicious prosecution may be founded on such an indictment whereon no acquittal can be, as if it be rejected by the grand jury, or be *coram non judice*, or be insufficiently drawn; for it is not the danger of the plaintiff, but the scandal, vexation, and expense, upon which this action is founded. However, any probable cause for preferring it is sufficient to justify the defendant, provided it doth not appear that the prosecution was malicious. 3 *Blac. Com.* 126. *Burr.* 1971.

But in cases of misdemeanor the defendant, who has been acquitted, need not obtain a copy of the indictment.

Morrison v. *Kelly*, 1 *Blac. Rep.* 385. At the sittings in *Middlesex*, an action came on to be tried for a malicious prosecution in indicting the plaintiff for keeping a disorderly house. To prove the fact, the clerk of the peace for the *Westminster* sessions attended, with the original record of the acquittal. It was objected that there ought to be a copy of the record *granted by the court* before which the acquittal is had, in order to ground an action for a malicious prosecution. But it was ruled by Ld. *Mansfield* C. J. that though this is necessary where the party is indicted for *felony*, yet the practice is otherwise in case of misdemeanors.

New trial refused after a verdict of "not guilty," upon an indictment for not repairing a road, where the verdict does not bind the right.

Rex v. *The Inhabs. of Burbon*, *M.* 57 *G.* 3. 5 *M. & S.* 392. Indictment for non-repair of a highway. Plea, not guilty. Upon the trial before *Wood* B. at the *Westmorland Sum. Ass.* 1816, there was a verdict of not guilty. And now, *Scarlett* moved for a new trial, upon the ground that the verdict was against all the evidence; and he said, that the prosecution was for the purpose of trying a civil right only.—But, *per* Lord *Ellenborough* C. J. In general, the rule is not to grant a new trial in a criminal proceeding after a verdict of not guilty. And inasmuch as the right will not be bound on the plea of not guilty, we do not think it would be proper to break into the general rule on the suggestion that the prosecution was merely intended to determine a civil right. R. R.

§ XIII. Indictments in Counties of Cities and Towns Corporate.

By stat. 51 *G. 3. c.* 100. After reciting, that whereas by an act passed in the 38th year of the reign of his present majesty, intituled "An act to regulate the trial of causes, indictments, and other proceedings, which arise within the counties of certain cities and towns corporate within this kingdom," it is amongst other things enacted (§ 2.), that it shall be lawful for any prosecutor to prefer his bill of indictment for any offence committed or charged to be committed within the county of any city or town corporate, to the jury of the county next adjoining to the county of such city or town corporate, sworn and charged to enquire for the king for the body of such adjoining county, at any sessions of oyer and terminer or general gaol delivery; and that every such bill of indictment found to be a true bill by such jury should be valid in law, as if the same had been found to be a true bill by any jury sworn and charged to enquire for the king for the body of the county of such city or town corporate: and whereas it was further provided by the said recited act (§ 3.), that if it should appear, in the manner herein mentioned, to any court of oyer and terminer or general gaol delivery for the county of any city or town corporate, that any indictment found by any grand jury of the county of such city or town corporate, or any inquisition taken before the coroner or coroners of the county of such city or town corporate, or other franchise, was fit and proper to be tried by a jury of any next adjoining county, that the same proceedings and trial should be had, and the same judgment should be given as would and might be had and given in cases of indictments or inquisitions for the like offences committed within such next adjoining counties, but no power was given in cases of conviction, in pursuance of any of the provisions in the said recited act, of ordering the execution of the sentence in the county of the city or town corporate within which the offence had been committed, and was charged to have been committed: and whereas it may be fit and expedient, that in such cases the punishment should be inflicted, and the sentences put in execution, in the respective counties of the cities or towns corporate where such offences had been so committed: it is enacted, that from and after the passing of this act, it shall and may be lawful for the court before which any conviction shall have taken place in pursuance of the provisions of the said recited act, to order every such convict to be punished according to law, either within the county where such conviction shall have taken place, or within the county of the city or town corporate wherein such offence shall have been committed; and in cases where the court shall order such convict to be punished within the county of such city or town corporate, it shall be lawful for the court, after passing sentence upon every such convict, to order him to be delivered into the custody of the sheriff, gaoler, or other proper officer of the county of such city or town corporate; and the sheriff, gaoler, or other proper officer of the county of such city or town corporate is commanded to receive into his custody every such convict, and to execute the sentence so passed upon him in

51 G. 3. c. 100. Reciting 38 G. 3. c. 52.

In cases of conviction under recited act, the sentence may be executed in the county of the city or town corporate.

51 G 3. c. 100. 38 G. 3. c. 52. such adjoining county, as if he had been tried and had received such sentence in the county of such city or town corporate.

§ 2. And whereas it is provided by the said in part recited act, (§ 8.) that in all cases of indictments and other proceedings which may be tried before H. M.'s justices of oyer and terminer or general gaol delivery, for any county, in pursuance of the provisions contained in the said act, it should and might be lawful for such justices to order the expenses of the prosecution, and of the witnesses, and of the several rewards payable in pursuance of the statutes in such cases made and provided on the conviction of offenders, to be paid by and to the same persons and in the same manner as the same would have been payable if such indictment had been tried in the court of oyer and terminer or general gaol delivery of the county of such city or town corporate: And whereas it is just and expedient that a similar provision should be made for the payment of all other expenses which may be incurred by any such adjoining county in relation to any person who may be tried or removed for trial to such adjoining county, for any offence committed or charged to have been committed in the county of any such city or town corporate; the justices of oyer and terminer or general gaol delivery, at any sessions thereof holden for such county, shall order all expenses whatsoever incurred by such county in relation to any person who shall be tried in such county or removed thither for trial, for any offence committed or charged to have been committed within the county of any such city or town corporate, as well in maintaining and supporting such person and carrying the sentence into execution as in any other respect, to be repaid to the treasurer of such county, or other person acting as treasurer of such county, or who shall have actually paid such expenses, by the same person and in the same manner as the same would have been payable, if such offender or supposed offender had remained in the county of such city or town corporate, and had been tried in the court of oyer and terminer or general gaol delivery of the county of such city or town corporate, and as if the sentence with respect to such offender had been carried into execution within the county of such city or town corporate.

Providing for payment of expenses not before provided for by the county of a city or town corporate.

Condition of a Recognizance to prefer a Bill of Indictment.

THE condition of this recognizance is such, That if the above bound A. I. *shall personally appear at the next general quarter sessions of the peace to be holden at ——— in and for the said county, and then and there prefer a bill of indictment against* A. O. *late of ——— yeoman, for the felonious taking and carrying away of ——— the property of ——— and shall then and there give evidence concerning the same to the jurors who shall enquire thereof on the part of our said lord the king; and in case the same be found a true bill, Then if the said* A. I. *shall personally appear before the jurors, who shall pass upon the trial of the said* A. O. *and give evidence upon the said indictment, and not depart without leave of the court, then this recognizance to be void.*

Condition of a Recognizance to answer to an Indictment.

THE condition of this recognizance is such, That if the above bound A. O. *shall personally appear at the next general quarter sessions of the peace to be holden at ——— in and for the said county, then and there to answer to an indictment to be preferred against him by* A. I. *of ——— yeoman, for assaulting and beating him the said* A. I. *and not depart without leave of the court, Then this recognizance to be void.*

Indorsing a Warrant in another County.

See Warrant, Vol. V.

Infants.

§ I. *How far answerable for Crimes.*
II. *Their Civil Incapacities.*
III. *Their Civil Capacities.*

§ I. How far answerable for Crimes.

BY an infant or minor is meant any one who is under the age of twenty-one years. 1 *Inst.* 2. Infant, who.

It is said generally, that those who are under a natural disability of distinguishing between good and evil, as infants under the age of fourteen years, which is called the age of discretion, are not punishable by any criminal prosecution whatsoever. But this must be understood with some allowance; for if it appear by the circumstances that an infant under the age of discretion could distinguish between good and evil, as if one of the age of nine or ten years kill another and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forfeit as much as if he were of full age. — But in such case the judges will in prudence respite the execution in order to get a pardon; and it is said, that if an infant apparently wanting discretion be indicted and found guilty of felony, the justices themselves may dismiss him without a pardon. And in general it must be left to the discretion of the judge, upon the circumstances of the case, how far an infant, under that age, is *capax doli*, or hath knowledge to discern betwixt good and evil. *Hale's Sum.* 43. 1 *Haw. c.* 1. § 8. 1 *Hale*, 18. 1 *Russ.* 4. Committing a crime, under fourteen.

The following is an important case as to the capability of an infant of ten years old to commit the crime of murder; and as to the expediency of visiting such an offender with capital punishment.

At *Bury Summer Assizes*, 1748, *William York*, a boy of ten years of age, was convicted before Ld. Ch. J. *Willes*, for the murder of a girl of about five years of age; and received sentence of death. But the chief justice, out of regard to the tender years of the prisoner, respited execution till he should have an opportunity of taking the opinion of the rest of the judges, whether it were proper to execute him or not, upon the special circumstances York's case. Case of murder by a boy of ten years old.

York's case. of the case; which he reported to the judges as follows:—The boy and girl were parish children, but under the care of a parishioner, at whose house they were lodged and maintained. On the day the murder happened, the man of the house and his wife went out to their work early in the morning and left the children in bed together. When they returned from work the girl was missing; and the boy being asked what was become of her, answered, that he had helped her up, and put on her clothes, and that she was gone he knew not whither. Upon this, strict search was made in the ditches and pools of water near the house, from an apprehension that the child might have fallen into the water. During this search, the man, under whose care the children were, observed that a heap of dung near the house had been newly turned up. And upon removing the upper part of the heap, he found the body of the child, about a foot's depth under the surface, cut and mangled in a most barbarous and horrid manner. Upon this discovery, the boy, who was the only person capable of committing the fact that was left at home with the child, was charged with the fact, which he stiffly denied. When the coroner's jury met, the boy was again charged, but persisted still to deny the fact. At length being closely interrogated, he fell to crying, and said he would tell the whole truth. He then said, that the child had been used to foul herself in bed; that she did so that morning (which was not true, for the bed was searched and found to be clean); that thereupon he took her out of the bed and carried her to the dung heap; and with a large knife which he found about the house, cut her in the manner the body appeared to be mangled, and buried her in the dung heap; placing the dung and straw that was bloody under the body, and covering it up with what was clean; and having done so, he got water and washed himself as clean as he could. The boy was the next morning carried before a neighbouring justice, before whom he repeated his confession with all the circumstances he had related to the coroner and his jury. The justice very prudently deferred proceeding to a commitment, till the boy should have an opportunity of recollecting himself. Accordingly he warned him of the danger he was in, if he should be thought guilty of the fact he stood charged with, and admonished him not to wrong himself; and then ordered him into a room where none of the crowd that attended should have access to him. When the boy had been some hours in this room, where victuals and drink were provided for him, he was brought a second time before the justice, and then he repeated his former confession; upon which he was committed to gaol. On the trial, evidence was given of the declarations before mentioned to have been made before the coroner and his jury, and before the justice, and of many declarations to the same purpose, which the boy made to other people after he came to gaol, and even down to the day of his trial. For he constantly told the same story in substance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with some other circumstances tending to corroborate the confession, he was convicted. Upon this report of the chief justice, the judges, having taken time to consider of it, unanimously agreed, 1. That the declarations stated in the report were evidence proper to be left to the jury. 2. That sup-

posing the boy to have been guilty of the fact, there were so many circumstances stated in the report which were undoubtedly tokens of what Ld. Ch. J. *Hale* somewhere (*a*) called a *mischievous discretion*, that he was certainly a proper object for capital punishment, and ought to suffer. For it would be of very dangerous consequence to have it thought that children may commit such atrocious crimes with impunity. There are many crimes of the most heinous nature, such as in the present case the murder of young children, poisoning parents or masters, burning houses, and the like, which children are very capable of committing, and which they may in some circumstances be under strong temptations to commit; and, therefore, though the taking away the life of a boy of ten years old may savour of cruelty, yet as the example of this boy's punishment may be a means of deterring other children from the like offences, and as the sparing this boy merely on account of his age will probably have a quite contrary tendency, — in justice to the public, the law ought to take its course, unless there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderness and caution, advised the Chief Justice to send another reprieve for the prisoner; suggesting that it might possibly appear on further inquiry that the boy had taken this matter upon himself, at the instigation of some person or other, who hoped by this artifice to screen the real offender from justice. Accordingly the Chief Justice did grant one or two more reprieves; and desired the justice who took the boy's examination, and also some other persons in whose prudence he could confide, to make the strictest inquiry they could into the affair, and make report to him. At length he, receiving no further light, determined to send no more reprieves, and to leave the prisoner to the justice of the law at the expiration of the last: but, before the expiration of that reprieve, execution was respited till further order, by warrant from one of the Secretaries of State. And at the summer assizes, 1757, he had the benefit of H. M.'s pardon, upon condition of his entering immediately into the sea-service. *York's case, Foster*, 70.

York's case, (*a*) 1 Hale, 630.

Under seven.

But within seven years of age there can be no guilt whatsoever of any capital offence; the infant may be chastised by his parents or tutors, but cannot be capitally punished, because he cannot be guilty; and if he be indicted for such an offence as is in its nature capital, he must be acquitted. 1 *Hale*, 19, 20.

Committing a rape.

An infant under fourteen is presumed by law unable to commit a rape, and therefore it seems cannot be guilty of it; and though in other felonies *malitia supplet ætatem* in some cases, yet it seems as to this fact the law presumes him impotent, as well as wanting discretion. 1 *Hale* 630.

Forcible entry.

An infant may be guilty of forcible entry, in respect of personal actual violence. 1 *Haw. c.* 64. § 35. And the justices may fine him therefore; but yet it shall be good discretion in the justices of the peace to forbear the imprisonment of such infant. *Dalt. c.* 126.

Because it is said, that he shall not be subject to corporal punishment, by force of the general words of any statute wherein he is not expressly named. 1 *Haw. c.* 64. § 35.

Cannot be an approver.

An infant under the age of discretion cannot be an approver, because he cannot take the oath requisite in that case. 2 *Haw. c.* 24. § 5.

§ II. Their Civil Incapacities.

There seems to be no precise age fixed at which infants are excluded from being witnesses. At one time, indeed, their age was considered as the criterion of their competency; and it was a general rule, that none could be admitted under the age of nine years, very few under ten, which was in some measure denying them the protection of law against secret acts of violence. A more reasonable rule has been since adopted; and the admissibility of children depends upon the sense and reason they entertain of the danger and impiety of falsehood, *which is to be collected from their answers to questions propounded by the court.* 1 *Phill. Ev.* 18, 19. *R.* v. *Travers*, 2 *Str.* 700. 1 *East's P. C.* 442. 1 *Hale*, 302. 2 *Id.* 278. *Bul. N. P.* 293.

In *Brazier's Case*, 1 *East's P. C.* 443, 444. 1 *Leach*, 237. on an indictment for assaulting an infant of five years of age, with intent to ravish her, it was agreed by all the judges, that children of any age might be examined on oath, if capable of distinguishing between good and evil: but they cannot be examined in any case without oath. This is now the established rule in all cases, criminal as well as civil, and whether the prisoner is tried for a capital offence, or for one of an inferior nature. 1 *Phill. Ev.* 19.

When the child has appeared not sufficiently to understand the nature and obligation of an oath, judges have often thought it necessary, for the purposes of justice, to put off the trial of a prisoner, directing that the child in the mean time should be properly instructed.

Thus in a criminal prosecution that was coming on to be tried at *Gloucester*, *Rooke* J., finding that the principal witness was an infant who was wholly incompetent to take an oath, postponed the trial till the following assizes, and ordered the girl to be instructed in the mean time by a clergyman in the principles of her duty, and the nature and obligation of an oath. At the next assizes the prisoner was put upon his trial, and the girl being found by the court, on examination, to have a proper sense of the nature of an oath, was sworn, and upon her testimony the prisoner was convicted, and afterwards executed. Mr. J. *Rooke* mentioned this at the *O. B.* in 1795, in the case of *Patrick Murphy*, who was indicted for a rape on a child of *seven* years old; and the learned judge added, that upon a conference with the other judges upon his return from the circuit, they unanimously approved of what he had done. *Vide* 2 *Bac. Abr.* 157. (n.) 1 *Leach*, 430. (n.)

If a child is too young to be sworn, it follows, as a necessary consequence, that any account which it may have given to others ought not to be admitted. On an indictment, therefore, for a rape on a child five years old, where the child was not examined, but an account of what she had told her mother, about three weeks after the transaction, was given in evidence by the mother, and the jury convicted the prisoner, principally, as was supposed,

on that evidence: the judges, on a case reserved for their opinion, thought the evidence clearly inadmissible, and the prisoner was accordingly pardoned. *R.* v. *Tucker*, reserved by *Marshall Serjt.* at *Exeter Spr. Ass.* 1808. *MS. C. C. R.* 1 *Phill. Ev.* 19.

An infant before twenty-one years of age shall not be sworn on an inquest. 7 & 8 *W. c.* 32. § 4. 1 *Inst.* 172. Juror.

A woman at nine years of age may have dower; at twelve may consent to marriage; and at fourteen is of age of discretion, and may choose a guardian. 1 *Inst.* 78. Woman's age of dower, marriage and choosing guardian.

A man is of age at twelve years to take the oath of allegiance in the torn or leet; and at fourteen is of age of discretion, may consent to marriage, and choose his guardian. 1 *Inst.* 78. Man's age of allegiance, marriage, and choosing guardian:

At twenty-one, and not before, persons may bind themselves by any deed, and alien lands, goods and chattels. 1 *Inst.* 171. Cannot make a deed till 21.

Upon which ground infants may not enter into recognizance to keep the peace, or to be of good behaviour, but their sureties only. Nor enter into recognizance.

But an infant may bind himself to pay for his necessary meat, drink, apparel, physic, and such like; and also for his good teaching or instruction, whereby he may profit himself afterwards; but if he bind himself in an obligation or other writing, with a penalty for the payment of any of these, that obligation shall not bind him. 1 *Inst.* 172. May contract for necessaries.

Neither will assumpsit lie against an infant on an account stated; for an infant is not competent to state an account. *Trueman* v. *Hurst*, 1 *T. R.* 40.; and *Bartlett* v. *Emery*, *Ib.* 40. *n. a.*

And in *Earle's* case, 1 *Salk.* 387., it is said, that an infant may buy necessaries, but cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him, but at the peril of the lender, who must lay it out for him, or see it laid out.

And it shall be only for necessaries, and not for matters of luxury or extravagance; and if, after he comes of age, he is prevailed on, by surprise or other undue means, to give security, yet a court of equity, on consideration of circumstances, will relieve. 2 *Atk.* 35.

§ III. Their Civil Capacities.

Also other things of necessity shall bind him, as a presentation to a benefice; for otherwise the lapse shall incur against him. 1 *Inst.* 172. May present to a benefice.

And infants seised of estates in trust, or by way of mortgage, may make conveyances thereof, as the courts of chancery or exchequer shall direct. 7 *Ann. c.* 19. 4 *G.* 3. *c.* 16. May convey in a court of equity.

And they may surrender leases in the courts of chancery or exchequer, in order to renew the same. 29 *G.* 2. *c.* 31. May surrender in a court of equity.

Also an infant hath, without consent of any other, capacity to purchase, for it is intended for his benefit; and at his full age he may either agree thereunto and perfect it, or without any cause to be alleged, wave or disagree to the purchase; and so may his heirs after him, if he agree not thereunto after his full age. 1 *Inst.* 2. May purchase.

The common law seems not to have determined precisely at what age one may make a testament of a personal estate; it is May make a will.

generally allowed, that it may be made at the age of eighteen, and some say under, for the common law will not prohibit the spiritual court in such cases. 1 *Inst.* 89. 1 *Hale*, 17.

The age of discretion is fourteen; and therefore it may seem that one may make a testament or personal estate at that age.

May be an executor.

A person is of age to be executor at seventeen; and an administration of any one during the minority of an infant ceaseth when the infant comes to that age. *Pigot's Case*, 5 *Rep.* 1 *Hale*, 17.

May bequeath the tuition of his children.

By stat. 12 *C.* 2. *c.* 24. § 8. Any person having child or children under twenty-one years of age, and not married, may by deed or will attested by two witnesses, dispose of the custody and tuition of such child or children, until they shall be of the age of 21, or for a lesser time; and this, whether such parent be within or above the age of 21.

May sue by prochein amy.

An infant cannot answer but by guardian; but he may sue either by his next friend or by guardian. 3 *Salk.* 196.

Cannot hold office of public trust.

An infant cannot be appointed to the office of clerk of a court of requests, being an office of public and pecuniary trust. *Claridge* v. *Evelyn*, 5 *B.* & *A.* 81.

In what case he may release a debt.

If an infant of the age of seventeen years release a debt, this is void; but if an infant make the debtor his executor, this is a good release in law of the action. 1 *Inst.* 264.

At what age he may be bound apprentice.

By stat. 5 *Eliz.* *c.* 4. Persons above the age of ten years, by their own consent and agreement, may be bound apprentices.

And by stat. 5 *El.* *c.* 5. Any person above seven years old may be bound apprentice to the sea-service.

By stat. 56 *G.* 3. *c.* 139. § 7. after 1st *October*, 1816, it shall not be lawful for any parish officers to bind out any child as parish-apprentice, until such child shall have attained the age of nine years.

(*For these matters, see* tit. Apprentices, Vol. I.)

Infant apprentice embezzling goods.

By stat. 12 *Ann.* st. 1. *c.* 7. It shall be felony without benefit of clergy to steal goods to the value of 40*s.* out of a house, though the house be not broken open; but this shall not extend to apprentices under 15 years of age.

Infant servant embezzling goods.

By stat. 21 *H.* 8. *c.* 7. Servants above the age of 18, embezzling their master's goods to the value of 40*s.* shall be punished as felons.

Advising child to steal.

Punishment of persons advising children to commit thefts. See stat. 3 *G.* 4. *c.* 38. § 3. Vol. I. tit. Accessary, p. 9.

Information.

[Stats. 18 El. c. 5.—31 El. c. 5.—21 J. c. 4.—c. 14.—4 & 5 W. c. 18.]

Information in general.

LORD *Hale* says, though informations are practised oftentimes in the crown office in cases criminal, and by many penal statutes, the prosecution upon them is by the acts themselves limited to be by *bill*, *plaint*, *information*, or *indictment*, yet thus

much is observable, that the method of prosecution of *capital* offences is still to be by indictment; and in all *criminal causes not capital*, the most regular and safe way, and most consonant to the statute of *magna charta* and other statutes, is by presentment or indictment of twelve sworn men. 2 *Hale*, 151.

Mr. *Hawkins* distinguishes informations into two kinds; such as are merely at the suit of the king, and such as are partly the suit of the king, and partly the suit of the party; and says, it hath been holden that the king shall put no one to answer for a wrong done principally to another without an indictment or presentment of a jury; but I do not find this distinction confirmed by experience; for it is every day's practice, agreeably to numberless precedents, to proceed by way of information, either in the name of the attorney general, or of the master of the crown office, for offences done principally to private persons, as for batteries, cheats, rescuing persons from legal arrest, perjuries, and subornations thereof, forgeries, conspiracies, and the like; as well as for offences done principally to the king, as for libels, seditious words, riots, extortions, disobeying the king's writs, abusing the king's commission to the oppression of the subject, and in general any other offences against the public good, or against the first and obvious principles of justice and common honesty. 2 *Haw*. c. 26. § 1.

Information qui tam.

Informations partly at the suit of the king and partly at the suit of the party are commonly called informations *qui tam*, from those words in the information when the proceedings were in *Latin*, *qui tam pro domino rege quam pro se ipso, &c.* 2 *Haw*. c. 26. § 17.

Action upon a statute.

Of near affinity to an information *qui tam*, is an action upon the statute; which is either a *private* action, which is, when an action is given upon a statute to the king and to the *party grieved* only; or a *popular* action, which is, where the action is given to the *people* in general, that is, to any one that will sue for the king and for himself.

But if the king commenceth his suit before the informer, the king shall have the whole forfeiture. 7 *T. R.* 536.

And he may, before the informer begins his suit, release the penalty to the offender, and bar all others; but if after a popular action is brought by the informer, the king's attorney will enter *ulterius non vult prosequi*, the informer may prosecute for his part. *Wood's Inst. b.* 4. *c.* 4.

And in general, it seems that of common right an information *at the suit of the king*, or an action in the nature thereof, may be brought for offences against statutes, whether they be mentioned by such statutes or not, unless other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 *Haw*. c. 26. § 2.

But an information or action *qui tam* will not lie on any statute which prohibits a thing as being an immediate offence against the public good in general, under a certain penalty, unless the whole or part of such penalty be expressly given to him who shall sue for it; because otherwise it goes to the king, and nothing can be demanded by the party. But where such statute gives any part of such penalty to him who will sue for it by action or information, any one may bring such action or information, and

lay his demand, *as well for our lord the king as for himself.* 2 *Haw.* c. 26. § 17.

Also where a statute prohibits or commands a thing, the doing or omission whereof is an immediate danger to the party, and also highly concerns the peace, safety, or good government of the public, or the honour of the king, or of his supreme courts of justice, it seems to be the general opinion, that the party grieved may bring his action *qui tam* on such statute. 2 *Haw.* c. 26. § 17.

31 El. c. 5. In what time a *qui tam* action shall be brought.

By stat. 31 *El.* c. 5. § 5, 6. All actions, suits, bills, indictments, or informations on any penal statute, whereby the forfeiture is limited to the king only, shall be brought within two years after the offence committed; if limited to the king, and to any other who shall prosecute, then within one year; and in default of such prosecution, then to be brought for the king, in two years after that year ended. Provided, that if they are or shall be limited by statute to be brought within shorter time, then they shall be brought within such time limited.

On any penal statute.] But if an offence prohibited by a penal statute be also an offence at common law, the prosecution of it, as of an offence at common law, is no way restrained thereby. 2 *Haw.* c. 26. § 44.

To any other who shall prosecute.] That is, to a common informer; and therefore the party grieved is not within the restraint of this statute, but he may sue in the same manner as before. 2 *Haw.* c. 26. § 47.

Two informations on the same day.

If two informations be exhibited on the same day for the same offence, they mutually abate one another. 2 *Haw.* c. 26. § 63.

In what county to be laid.

By stat. 21 *J.* c. 4. § 1. All offences against any penal statute, for which any common informer may ground a popular action, bill, plaint, suit, or information before justices of assize, justices of nisi prius or gaol delivery, justices of oyer and terminer, or justices of peace, in their general or quarter sessions, shall be commenced, sued, prosecuted, tried, recovered, and determined by way of action, plaint, bill, information, or indictment before the justices of assize, justices of nisi prius, justices of oyer and terminer, and justices of gaol delivery, or before the justices of peace of every county, &c. having power to enquire of, hear, and determine the same, &c. in the county wherein such offences shall be committed and not elsewhere [*and* by 31 *El.* c. 5. they shall be laid to be done in the county in which the matter alleged to be the offence was in truth done]; and that all informations, actions, bills, plaints, and suits whatever, hereafter to be commenced, sued, prosecuted, or awarded, either by the attorney general or by any common informer, or other person in any of H. M.'s courts of *Westminster*, for or concerning any of the offences, penalties, or forfeitures aforesaid, shall be void and of none effect.

And if the offence is not proved to have been committed in the same county, the defendant shall be found not guilty.

§ 5. Provided, that informations, suits, or actions against popish recusants, or persons charged with maintenance, champerty, or buying of titles, may be laid in any county.

Against any penal statute.] *R.* v. *Gall,* 1 *Salk.* 372. 1 Ld. *Raym.* 370. *Holt* Ch. J. said, ten judges had agreed that this statute doth not extend to any offence created since; so that prosecutions on subsequent penal statutes are not restrained

thereby; but this statute is as to them, as it were, repealed *pro tanto.*

For which any common informer may ground a popular action.] Therefore this extends not to any suit by a party grieved, or by the attorney general; but only to those brought by common informers. 2 *Haw. c.* 26. § 29.

General or quarter sessions, having power to hear and determine the same.] Yet this gives no jurisdiction to justices of the peace which they had not before; but only appoints that where informations might have been brought in the courts at *Westminster* or before justices of the peace, such informations shall be now brought before justices of the peace only. *Cro. Car.* 112.

This act does not extend to all proceedings on penal statutes: it only prohibits the proceedings in the courts of *Westminster* in all those cases where popular actions, bills, plaints, suits or informations might have been brought in inferior courts. 4 *T. R.* 115.

When a power is given to a jurisdiction, which does not ordinarily entertain actions, bills, or plaints, *to enquire of, hear, and determine* the offence generally, it must be understood to mean by the common-law mode of proceeding, *viz.* by indictment or presentment. 4 *T. R.* 115. See title Sessions.

In the county where they were committed.] *Smith* v. *Potter*, 1 *Str.* 415. in the K. B. In a *qui tam* on stat. 5 *Eliz.* (repealed by stat. 54 *G.* 3. *c.* 96. See Vol. I. p. 182.) for exercising a trade without an apprenticeship, it was moved to stay the proceedings, because the nominal plaintiff had released, and the fact was laid at *Cambridge*, whereas the jurisdiction of the K. B. is at last settled to be restrained by stat. 21 *J. c.* 4. to actions arising in the county where the K. B. sits, so that if they were to go on to trial, the plaintiff could have no effect of his suit; and of this opinion were the court, and they made a rule that proceedings should be stayed.

And not elsewhere.] But where a subsequent statute gives a remedy for the recovery of a penalty in any court of record generally, it so far impliedly repeals this restraint, and consequently leaves the informer at his liberty to sue in the courts at *Westminster.* 2 *Haw. c.* 26. § 35.

Also where a statute limits suits by an informer *qui tam* to other courts than those of *Westminster-hall*, yet any one may, by construction of law, exhibit an information in the exchequer for the whole penalty, for the use of the king. 2 *Haw. c.* 26. § 25.

If jurisdiction be given to the sessions to hear and determine, and it is not said by information, this shall be by indictment, and not information. *Cro. Car.* 112.

Sessions hath not power without express words.

Time of exhibiting the information to be entered.

By stat. 18 El. c. 5. § 1. *Upon every information which shall be exhibited by a* (common) *informer, except for maintenance, champerty, buying of titles, or embracery, a note shall be made of the day, month, and year of the exhibiting thereof; and it shall be taken to be of record from that time forward and not before; and no process shall be issued on such information, till it be exhibited in form aforesaid.*

21 J. c. 4. Oath to be made on exhibiting the information.

And by stat. 21 J. c. 4. § 3. *No officer shall enter any information, bill, or plaint, count or declaration, till the informer hath made oath before some of the judges of the court that the offence was not committed in any other county, and that he believeth in his conscience that the offence was committed within a year before the*

information or suit, within the said county where the said information or suit was committed; the oath to be there entered of record.

For as a warrant deprives a man of his liberty, a summons only ought to issue, and not a warrant, without information upon oath. 2 *Barnard.* 34. 77. 101.

This statute only applies to penal statutes on which proceedings may be had before the justices of assize, justices of the peace, &c.; therefore the court of K. B. will not stay proceedings in debt on a penal statute, though no affidavit has been filed that the offence was committed in the county where the action is brought, and within a year before the beginning of it. 3 *T. R.* 362.

4 & 5 W. & M. c. 18. Recognizance to be given.

And in the court of K. B., by stat. 4 & 5 *W. & M. c.* 18. § 1, 2. "In cases of informations for trespasses, batteries, and other misdemeanors, the clerk of the crown in the said court of K. B. for the time being, shall not, without express order to be given by the said court in open court, exhibit, receive, or file any information for any of the causes aforesaid, or issue out any process thereupon, before he shall have taken or shall have delivered to him a recognizance from the person or persons procuring such information to be exhibited, with the place of his, her, or their abode, title or profession, to be entred, to the person or persons against whom such information or informations is or are to be exhibited, in the penalty of twenty pounds, that he, she, or they, will effectually prosecute such informations or information, and abide by and observe such orders as the said court shall direct, which recognizance the said clerk of the crown, and also every justice of the peace of any county, city, francise or town corporate (where the cause of any such information shall arise) are hereby impowered to take; after the taking whereof by the said clerk of the crown, or the receipt thereof from any justice of the peace, the said clerk of the crown shall make an entry thereof upon record, and shall file a memorandum thereof in some public place in his office, that all persons may resort thereunto without fee; and in case any person or persons against whom any information or informations for the causes aforesaid, or any of them, shall be exhibited, shall appear thereunto, and plead to issue, and that the prosecutor or prosecutors of such information or informations shall not, at his and their own proper costs and charges, within one whole year next after issue joined therein, procure the same to be tried; or if upon such trial a verdict pass for the defendant or defendants, or in case the said informer or informers procure a *noli prosequi* to be entered; then and in any of the said cases the said court of K. B. is hereby authorized to award to the said defendant and defendants, his, her, or their costs, unless the judge before whom such information shall be tried, shall at the trial of such information, in open court, certify upon record, that there was a reasonable cause for exhibiting such information; and in case the said informer or informers shall not within three months next after the said costs taxed, and demand made thereof, pay to the said defendant or defendants the said costs, then the said defendant and defendants shall have the benefit of the said recognizance, to compel them thereunto."

Memorandum to be filed.

In what case defendant shall have costs.

Remedy for costs.

In the name of the master of the crown office.] From hence it follows, that informations exhibited by the attorney general remain as they were at common law. 2 *Haw. c.* 26. § 6.

And the general practice of the court of K. B. is, not to order an information to be filed, without first making a rule upon the defendant to shew cause to the contrary; and this rule is never granted but upon motion in open court, grounded upon affidavit of some offence of an enormous kind, or dangerous tendency. The defendant must be personally served with the rule, and if he do not at the day given for that purpose satisfy the court by affidavit that the substance of the charge is false or frivolous, or other reasonable cause against the prosecution, the court usually grants the information. 2 *Haw.* c. 26. § 8. Rule to shew cause.

In *R.* v. *Webster*, 3 *T. R.* 388., a rule had been obtained calling on the defendant, who was a justice of the peace for *Devon*, to shew cause why an information should not be exhibited against him, for having improperly convicted a person for killing a hare, the conviction having been afterwards quashed at the sessions. The party applying for the information charged the defendant with very gross misconduct; a preliminary objection was taken to the court's entering into the merits, because the party convicted, who applied for the information, had not made any affidavit of his being a qualified person, and that he had taken out a certificate. And it was contended, that it was the constant practice of the court to refuse applications of this sort for acts of injustice done to individuals under pretence of certain improper acts done by them, unless those persons make an exculpatory affidavit denying the fact with which they were charged; as in the case of libels. On the contrary, it was contended, that that was not necessary in a case like the present. This application was not made on account of the injury done to the individual, but on account of the injury done to the public, in a gross abuse of a judicial duty. And whatever might be the acknowledged demerits of the suffering party, still the crime was the same in the magistrate, who acted in open violation of his duty. — Ld. *Kenyon* Ch. J. The question is not whether the doors of justice shall be stopped, but whether justice shall be approached by this particular avenue. If the defendant has acted improperly, however guilty the party applying might be of the charge which was imputed to him, there are other ways open to him for redress. But we cannot interfere in this particular manner, according to the established rules of the court, without an affidavit from the party complaining that he is innocent of the fact with which he was charged. I remember an application of this sort against Sir *John Fielding*, for having issued a warrant against one *Bernard*, upon a charge against him (not upon oath) by the Duke of *Marlborough*, for sending threatening letters to extort money from the duke; but the information was denied for want of such an exculpatory affidavit from *Bernard*. — *Ashhurst* and *Grose* Js. concurred. (*Buller* J. absent.) R. D. The person applying must first make an exculpatory affidavit denying the fact.

In granting informations, the court always look to the motive; and when a person applies for an information, he is understood to wave his right to bring an action, unless the court should, on hearing the whole matter, be of opinion that it is a proper subject to be tried in a civil action, and should specifically give him leave to do so; if an information, therefore, be granted, it is of course to stay proceedings in an action for the same cause. *R.* v. *Barratt*, 2 *Dougl.* 466. *R.* v. *Sparrow*, 2 *T. R.* 198.

The court of king's bench granted an information against a person refusing to take on him the office of sheriff, because the vacancy of the office occasioned a stop to public justice; and the year would be nearly expired before an indictment could be brought. *Rex* v. *Woodrow*, 2 *T. R.* 731.

Process on an information.

By stat. 21 *J. c.* 4. § 1. *The like process shall be awarded upon an information by a common informer, as in an action of trespass* vi et armis *at the common law.*

And consequently, the process in all such suits must be by attachment, or *pone per vadios,* and after by distress infinite, where by the return the party appears to be sufficient, otherwise by *capias.* 2 *Haw. c.* 27. § 13.

18 El. c. 5. Process to be indorsed.

And by stat. 18 *El. c.* 5. § 1. *On every process upon an information by a common informer shall be indorsed as well the party's name that pursueth the process, as also the statute upon which the information is grounded.*

Process on a criminal information.

But on a *criminal* information, it is the usual practice of the crown office, first to award a *subpœna;* and after the return thereof, if no appearance be entered in four days, and an affidavit be made of the service of the *subpœna,* to make out a *capias* of course, where the defendants are informed against in their private capacity, and a *distringas* where they are sued as a corporation aggregate. 2 *Haw. c.* 27. § 14.

21 J. c. 4. General issue.

By stat. 21 *J. c.* 4. § 4. *If any information, suit, or action shall be brought against any person on a penal statute, the defendant may plead the general issue, and give the special matter in evidence.*

Information not quashed upon motion.

The court will not generally quash an information upon motion, but the party must either plead, demur, or move an arrest of judgment. 1 *Salk.* 372. *Str.* 185. 953.

Certainty required in an information.

But seeing that an information differs from an indictment in little more than this, that the one is found by the oath of twelve men, and the other is not so found, but is only the allegation of the officer or person who exhibits it; whatsoever certainty is required in an indictment, the same at least is necessary also in an information; and consequently, as all the material parts of the crime must be precisely found in the one, so must they be precisely alleged in the other, and not by way of argument or recital. 2 *Haw. c.* 26. § 4.

Not aided by the statutes of jeofails.

And therefore the statutes of jeofails, (from *J'ay faillé,* I have failed,) or the statutes that do remedy oversights in pleading, extend not to informations. *Wood's Inst. b.* 4. *c.* 4.

Information good as to part.

If an information contain several offences against a statute, and be well laid as to some of them, but defective as to the rest, the informer may have judgment for so much as is well laid. 2 *Haw. c.* 26. § 19.

Costs against the plaintiff.

Generally; *if a* (common) *informer shall willingly delay his suit, or discontinue, or be nonsuit, or shall have a verdict or judgment against him, he shall pay costs to the defendant.* Stat. 18 *El. c.* 5. § 3.

4 & 5 W. 3. c. 18.

And in the court of K. B. particularly, by stat. 4 & 5 *W.* 3. *c.* 18. § 2. *if the defendant, in such case as in this stat. is aforementioned, shall appear and plead to issue, and the prosecutor shall not at his own costs within a year after issue joined, procure the same to be tried, or if a verdict pass for the defendant, or the informer procure a* noli prosequi *to be entered, the court of king's bench may award the defendant his costs, unless the judge shall certify that there was a reasonable cause for exhibiting such inform-*

ation. And if the informer shall not, in three months after such costs taxed and demand made, pay the same, the defendant shall have the benefit of the recognisance above-mentioned, to compel him thereunto.

§ 6. But nothing in this act relating to informations shall extend to any other than such as are exhibited in the name of the king's coroner, or attorney in the king's bench, (*i.e* the master of the crown office.)

Unless the judge shall certify.] *R.* v. *Woodfall*, 2 *Str.* 1131. Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for costs on this statute, which provides, that in cases where the defendant is acquitted, the court is authorised to award costs to the defendant, unless the judge shall, at the trial, certify that there was a reasonable cause. In this case, no such certificate was asked; but it was insisted on for the prosecutor, that it was discretionary in the court. The chief justice certified *ore tenus*, that it was a verdict against evidence; but then he and all the others held, that it was now too late to enquire into the probable cause; and that it was not discretionary, but compulsory upon them, where there was no certificate. So the defendant had his costs.

Costs against the defendant.

But it seems to be in a great measure settled, that an *informer* upon a popular statute shall in no case whatsoever have his costs, unless they be expressly given him by such statute: for it is certain that he cannot recover them by the common law, for that doth not give costs in any case; neither can he recover them by the statute of *Gloucester*, which gives the demandant his costs in all cases wherein he shall recover his damages; for this seems to suppose some damage to have been done to the demandant in particular, which cannot be said in any popular action. But it seems agreed, that an action on a statute *by the party grieved*, for a certain penalty given by such statute, is within the statute of *Gloucester*, because such penalty is intended him by way of recompence for his particular damage by the offence prohibited, and if he could recover that only and no more by way of costs, it would be in most cases in vain for him to sue for it, since the costs of suit would exceed it. *Jackson* v. *The Inhabitants of Calesworth*, 1 *T. R.* 71. But it is said, that no costs shall be recovered in an action on a statute which gives no *certain* penalty to the party grieved, but only his *damages* in general, if such a statute be introductive of a new law, and give a remedy in a point not remediable at the common law; but there is not that inconvenience in this case as in the former; because no certain sum being specified, the jury may give the plaintiff a full satisfaction by way of damages. 2 *Haw.* *c.* 26. § 57.

Compounding information on penal statutes.

The compounding of *informations on penal statutes* is a misdemeanor against public justice, by contributing to make the law odious to the people. 4 *Blac. Com.* 136. Therefore, in order to discourage malicious informers, and to provide that offences when once discovered shall be duly prosecuted, it is enacted by stat. 18 *Eliz.* *c.* 5. § 4. "*That if any person or persons (except the clerks of the court only, for making out of process otherwise than is above appointed) shall offend in suing out of process, making of composition or other misdemeanor, contrary to the true intent and meaning of this statute, or shall by colour or pretence of process, or without pro-*

18 Eliz. c.5. The punishment of an informer misbehaving himself in the prosecu-

18 Eliz. c.5.

tion of his suit, &c.

cess, upon colour or pretence of any matter of offence against any penal law, make any composition, or take any money, reward or promise of reward for himself or to the use of any other, without order or consent of some of her majesty's courts at Westminster, *that then he or they so offending being thereof lawfully convicted, shall stand on the pillory* (a) *in some market town next adjoining where the same offence shall be committed, in the open market time, and therein remain by the space of two hours; and shall from and after such conviction for ever be disabled to pursue, or be plaintiff or informer in any suit or information upon any statute popular or penal; and shall also for every such offence forfeit and lose ten pounds of lawful English money, the one half thereof to the queen's majesty, her heirs and successors, and the other half to the party grieved thereby, to be recovered in any court of record, by action of debt or information, in which no essoin, protection, injunction or wager of law shall be permitted or allowed; and that justices of oyer and terminer, justices of assize in their circuits, and justices of peace in their quarter sessions, shall have full power and authority to hear and determine all offences to be committed or done contrary to the true intent and meaning of this present act."*

What justices may hear and determine these offences.

Gotley's case, To compound an offence against 13 G.3. c.84. § 13. (the General Turnpike Act), though no action or proceeding be depending, is within 18 Eliz. c.5. § 4.

Richard Gotley was convicted before *Le Blanc* J. at the *Shrewsbury Lent Assizes*, 1805, on an indictment upon the stat. 18 *Eliz. c.* 5. § 4. for compounding an offence against the highway act [13 *G.* 3. *c.* 84. (*b*) § 13.] and taking a sum of money without process to prevent an action being brought, without the order or consent of any of H.M.'s courts at *Westminster*, and without lawful authority. The indictment contained several counts, some of them stated the party of whom the money was taken *to have committed the offence*, whereby the penalty was incurred; others of them stated only that the prisoner compounded, and took the money by and upon colour and pretence of a certain matter of offence pretended to have been committed.—It was satisfactorily proved that *Edward Round*, the person named in the indictment, from whom the prisoner was charged to have taken money by way of composition, had incurred a penalty of 5*l.* under stat. 13 *G.* 3. *c.* 84. § 13. by suffering his waggon to be drawn on a turnpike road by more than four horses, he being the owner, and that the prisoner had received from him 5*l.* 2*s.* (the 2*s.* over was to have been returned) by way of composition to prevent any legal proceedings, the prisoner having applied to *Round* for the purpose, and demanded the 5*l.* as a penalty which *Round* had so incurred.—No process was sued out or information given before any magistrate. Judgment was respited on a doubt which occurred to the learned judge at the trial, whether this offence was within stat. 18 *Eliz. c.* 5. so as to subject the prisoner to the specific punishment prescribed by that act, inasmuch as no action or proceeding was depending, in which the order or consent of any court in *Westminster Hall* for a composition could be obtained. The judges on conference (*May* 11, 1805,) were all of opinion that the conviction was right; stat. 18 *Eliz.* applying to all cases of taking a penalty incurred, or

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(a) By stat. 56 *G.*3. *c.*138., this part of the punishment cannot now be inflicted. But sect. 2. of that statute empowers the court to pass such sentence of fine or imprisonment, or of both, in lieu of the sentence of pillory, as to the court shall seem proper.

(*b*) Repealed by stat. 3 *G.*4. *c.*126. *Vide* Vol. II. *tit.* Highways, Turnpike.

pretended to be incurred, without leave of a court at *Westminster*, or without judgment or conviction. *MS. C. C. R.*

This statute extends to penal actions, where the whole penalty is given to the prosecutor. 4 *Black. Com.* 136. (*n.* 3).

The true construction of this stat. is to restrain the operation of § 4. to cases cognizable in the superior courts. It does not extend to offences cognizable only before magistrates in their summary jurisdiction, and therefore an indictment for compounding such an offence was holden bad in arrest of judgment. *R.* v. *Crisp & others*, 1 *B. & A.* 282.

Operation of 18 El. c. 5. § 4. as to compounding, restrained to cases cognizable in superior court.

The court will not give leave to compound in a penal action after verdict, unless the defendant can shew circumstances which entitle him to such an indulgence. *Crowder* v. *Wagstaff*, 1 *Bos. & Pull.* 18.

In compounding a penal action on the post-horse act (which gives costs to the prosecutor) the prosecutor was allowed to receive the deficient duties (not amounting to 40*s.*) and full costs of suit, though together exceeding the 40*s.* paid to the crown. The court observed that as the act was made for the benefit of the farmers of the post-horse duties, it was not unreasonable that they should make the composition on their own terms: besides, with respect to costs, this was not like other popular actions. *North*, q. t. v. *Smart*. 1 *Bos. & Pull.* 51.

The court of C. P. will not permit the defendant in a *qui tam* action to compound, unless the counsel for the crown are instructed to consent on behalf of the treasury. *Sheldon* v. *Mumford*, 5 *Taunt.* 268.

And by stat. 4 *H.* 7. *c.* 20. *if the defendant plead a recovery by a former action, which former action shall be found to have been collusive, the plaintiff shall recover, as though no such action before had been had; and if the defendant shall be convicted of such collusion, he shall be imprisoned two years, by process of* capias *and outlawry, and that as well at the king's suit as of every other that will sue.*

4 H. 7. c. 20. Collusive action.

And no release of any common person to any such party, whether before or after any action popular, or indictment of the same commenced or made, hanging the same action, shall be available to surcease the said action, indictment, process, or execution.

Form of an Information *qui tam.*

County of ——— } *BE it remembered, that* A. I. *of* ——— *in the county of* ——— *gentleman, who as well for our lord the now king as for himself doth prosecute, cometh before the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter sessions of the peace, holden at* ——— *in and for the said county, the* ——— *day of* ——— *in the* ——— *year in the reign of* ——— *in his proper person; and as well for our said lord the king as for himself giveth the court here to understand and be informed, That* A. O. *late of* ——— *in the county aforesaid, yeoman, on the* ——— *day of* ——— *in the year aforesaid, at* ——— *aforesaid in the county aforesaid, not regarding the laws and statutes of our said lord the king, but intending to* ——— *with force and arms* [here insert the offence with the same precision as in an indictment] *against the form of the statute in that case made and provided; whereupon the aforesaid* A. I. *as well for our said lord the king*

as for himself prayeth the advice of this court in the premises; and that the aforesaid A. O. *may forfeit the sum of* ——— *according to the form of the statute aforesaid; and that he the same* A. I. *may have one moiety thereof, according to the form of the statute aforesaid, and also that the aforesaid* A. O. *may come here into this court to answer concerning the premises; and there are pledges of prosecuting* John Doe *and* Richard Roe. *And hereupon it is commanded to the said* A. O. *that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county to answer as well to our said lord the king as to the said* A. I. *who as well for our said lord the king as for himself doth prosecute of and concerning the premises, and further to do and receive what the said court shall consider in this behalf.*

Ingrossing. See **Forestalling**, Vol. II.
Inns and Inn-keepers. See **Alehouses**, Vol. I.

Insolvent Debtors.

THE statutes on this subject are 32 *G.* 2. *c.* 28. (usually called the Lords' Act, from its having originated in the House of Lords), 26 *G.* 3. *c.* 38.—31 *G.* 3. *c.* 46. § 6.—33 *G.* 3. *c.* 5.—37 *G.* 3. *c.* 85. —39 *G.* 3. *c.* 50.—52 *G.* 3. *c.* 34.—53 *G.* 3. *c.* 102.—54 *G.* 3. *c.* 23. —56 *G.* 3. *c.* 102.—59 *G.* 3. *c.* 129.—1 *G.* 4. *c.* 119. (Insolvent Debtors' *Court* Act)—3 *G.* 4. *c.* 123.—5 *G.* 4. *c.* 61.

The only parts of these statutes which fall within the cognizance of a justice of the peace, are those sections of 1 *G.* 4. *c.* 119. and 3 *G.* 4. *c.* 123., by which the Insolvent Court is empowered to delegate a jurisdiction over insolvents to the quarter sessions. Stat. 5 *G.* 4. *c.* 61. § 1. repeals so much of these acts as gives the Insolvent Court the above power; "*Except in Wales.*"

The following provisions (viz. 1 *G.* 4. *c.* 119. §. 20.—23. and 3 *G.* 4. *c.* 123. § 14. are therefore annexed for the use of justices of peace in the Principality. *Note.* Stat. 1 *G.* 4. *c.* 119. § 46. *post*, p. 91. seems in force in *England*, and not repealed by 5 *G.* 4. *c.* 61. § 1.

5 G. 4. c. 61. Repeal of acts giving jurisdiction to justices of sessions,

By stat. 5 *G.* 4. *c.* 61. § 1. so much of stats. 1 *G.* 4. *c.* 119. and 3 *G.* 4. *c.* 123. as gives any power, authority, or jurisdiction, or enables the court for relief of insolvent debtors to give or delegate any power, &c. to any justices of the peace at their general or quarter sessions of the peace, or at any adjournment thereof, for any county, riding, city, cinque port, ancient town, or member, division, liberty, or place, shall be repealed from 1 *Sept.* 1824. Except as to the justices of peace at their general or general quarter sessions of the peace, or at some adjournment thereof, for any county, city, liberty, or place in the principality of *Wales*.

except as to Wales.

By § 23. this act shall take effect upon and after 1 *Sept.* 1824, and continue in force till 1 *June* 1825, and from thence till the end of the then next session of parliament.

Continuance of act.

By stat. 1 *G.* 4. *c.* 119. § 20. it is enacted, That the justices of the peace for every county, riding, city, cinque port, ancient

town or members, division, liberty or place, assembled at the general quarter sessions or general sessions of the peace, or at any adjournment thereof, and from time to time afterwards as occasion may require, shall and may in open court appoint as many fit persons as they shall judge sufficient, to be examiners for the purposes of this act, within their respective jurisdiction.

1 G.4. c.119.

Justices of the peace to appoint in their districts examiners, &c.

§ 21. Enacts, that the court for relief of insolvent debtors established by virtue of this act, shall and may in all cases, as they shall think fit, order and direct that any prisoner, instead of being brought before such court for final examination, shall be examined by the justices of the peace in open court, at their general or general quarter sessions of the peace, or at some adjournment thereof, for any county, riding, city, cinque port, ancient town or member, division, liberty or place, who are hereby respectively empowered and required to take such examination pursuant to such order; and the said court shall forthwith cause 21 days' notice to be given in the *London Gazette*, and in such one or more newspapers as the said court shall direct, of the day on which, and the place where, the said prisoner shall be brought before the said justices for his examination; and such prisoner shall, according to such order, be carried before such justices, for which such order shall be a sufficient warrant; and in case any one creditor shall give two days' notice to such prisoner of his or her intention to oppose such prisoner's discharge, then it shall be lawful for such creditor, or for any other creditor, to oppose such prisoner's discharge, and to put to such prisoner all such questions as to such justices shall appear relevant and proper, and such prisoner shall answer upon oath all such questions; and if it appears to such justices to be proper that the accounts and the matters of the schedule of such prisoner, should be further investigated and examined, then it shall be lawful for such justices to adjourn the hearing of the petition of such prisoner to some subsequent general or quarter or adjourned sessions, and at the request of any one or more creditors, to order and direct that some one of the examiners appointed by the said justices by virtue of this act, shall examine into the matters of the said schedule, and certify his opinion thereon to the said justices at such general or quarter or adjourned sessions to which the hearing of such petition shall have been adjourned, and of which adjournment all parties interested shall take notice; and that such examiner shall and may receive for his trouble the sum of 1*l.* and no more for every meeting under such order, to be paid for by the person or persons requiring the same; and in case it shall appear to the said justices upon such examination, or by evidence, that such prisoner is entitled to the benefit of this act, then the said justices shall so declare and adjudge, and shall certify the same to the court to be established by virtue of this act; and in case it shall appear to the said justices by such examination, or by evidence, that such prisoner shall have contracted any debts, against which he shall seek to be discharged, fraudulently, or without any reasonable or probable expectation, at the time of contracting the same, of being able to pay the same, or shall, with intent to conceal the state of his affairs, or to defeat the objects of this act, have destroyed or otherwise wilfully prevented the production of any books, papers or writings, relating to such of his affairs as are subject to investigation under this act, or shall have kept, or cause to be kept, false books, or made false entries,

The court may direct final examinations to be taken at quarter sessions, (in Wales, 5 G.4. c.61. § 1.)

Notice to be given in the London Gazette, &c.

Prisoner's discharge may be opposed upon notice.

Schedule may be further investigated.

Certificate.

Examiner to receive 1l. for every meeting.

Justices to certify to the court if prisoner is entitled to discharge; but if prisoner shall have acted fraudulently, &c. justices shall adjudge accordingly.

1 G.4. c.119. or have wilfully and fraudulently altered or falsified any such books, papers or writings, or shall in any respect have been guilty of fraud, in contracting, discharging, or concealing any debt due from the said prisoner to any of his or her creditors, or shall have fraudulently made away with, charged, mortgaged or concealed any part of his or her property, of what kind soever, either before or after the commencement of his or her said imprisonment, for the purpose of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of the said creditors, or that such prisoner shall have put any of such creditors as shall have proved their debts to unnecessary expence, by any vexatious or frivolous defence, or improper delay, in any suit for recovering the same, or that such prisoner shall have wilfully or fraudulently omitted any effects or property whatsoever, to the value of not less than 20*l.* in the whole, in the schedule which the said prisoner shall first have delivered in to the said court, then such justices shall so declare and adjudge, and shall also declare and adjudge in like manner, and subject to the same limitations as are herein before mentioned and imposed in such cases upon the court to be established by virtue of this act, for what period of time such prisoner shall remain in actual custody before such prisoner shall be discharged from custody by virtue of this act; and such justices shall forthwith certify the same to the court to be established by virtue of this act; and thereupon such court shall accordingly order and direct, that the said prisoner shall be discharged from custody when and so soon as he shall have been in such actual custody for the full period of time expressed in such certificate as aforesaid.

Justices to certify.

After prisoner's committal, affidavits of creditors may be received in opposition to discharge.

§ 22. enacts, That in case any such prisoner, after his commitment to such actual custody as aforesaid, shall be removed by any writ of *habeas corpus* or otherwise, from the place of such actual custody, or shall be rendered in discharge of his bail, it shall be lawful for the said court to receive the affidavits of any creditor or creditors, or of any other person or persons, in opposition to the discharge of such prisoner under this act; and also, if such court shall think fit, to permit interrogatories to be filed for the examination or cross-examination of every person making or joining in such affidavit, and also to stay the discharge of every such prisoner until such interrogatories shall be fully answered to the satisfaction of such court: provided always, that this shall not extend to any prisoner who shall have been in such actual custody, or arrested, within the counties of *Middlesex* or *Surrey*, or the city of *London*.

Proviso as to Surrey, Middlesex, and London.

Prisoner may be remanded, and afterwards brought up for examination.

By § 23. such order of the said court for the discharge of such prisoner shall in all cases be final and conclusive, and shall not be reviewed by the said court, unless such court so making the said order shall after such order made, see good and sufficient cause to believe that such adjudication and the order founded thereon shall have been made on false evidence, or otherwise fraudulently obtained, in which case it shall be lawful for any creditor of the said prisoner to apply to the said court to direct the said prisoner to be brought again before them: and it shall be lawful for the said court, upon due notice to be given by such creditor, to rehear the said matter and make such further order as to them shall seem fit in execution of the powers in this act contained: Provided always, that in case such court, or such justices of the peace as

aforesaid, shall entertain any doubt, touching any matter alleged against such prisoner at the time of his final examination before mentioned, to prevent his or her discharge, or touching the examination of such prisoner, it shall be lawful for such court, or such justices, to remand such prisoner to custody, and afterwards to cause such prisoner to be again brought up for examination, as often as to the said court or the said justices shall seem fit. 1 G.4. c.119.

Stat. 3 *G.* 4. *c.* 123. § 14. reciting, whereas by stat. 1 *G.* 4. *c.* 119. § 23. the court of insolvent debtors is authorized, in certain cases, upon the application of any creditor of a prisoner, to direct such prisoner afte his discharge to be brought again before them, and upon due notice to be given by such creditor, to rehear the matter, and make such further order as to them shall seem fit, in execution of the powers in the said recited act contained; enacts, that where in any such case the insolvent after his discharge shall refuse or neglect to appear before the said court, or before the justices at their general or quarter or adjourned sessions, when the said court shall direct the matter to be reheard before such justices, who are hereby authorized to rehear the same, and to make such further order as to them shall seem fit, in execution of the powers in the said recited act contained, on the day and at the time specified in any rule of the said court, a copy whereof shall have been duly served on such insolvent, it shall be lawful for the said court to order the said insolvent to be apprehended and remanded into custody, in such prison as the said court shall direct, and to issue their warrant accordingly, and to cause him to be brought up for examination as often as to the said court or to the said justices shall seem fit.

3 G.4. c.123. Court may cause insolvent to be apprehended and remanded when he refuses to appear.

Sessions authorised to re-hear, if court so directs.

Stat. 1 *G.* 4. *c.* 119. § 46. reciting, whereas the estates both real and personal of any prisoner who may be discharged by virtue of this act, may not be sufficiently described or discovered in the schedule before directed to be delivered upon oath by such prisoner, or the assistance of such prisoner may be necessary to adjust, make out, recover, or manage his estate or effects, for the 'benefit of his or her creditors;' be it therefore enacted by the authority aforesaid, that it shall and may be lawful, to and for the assignee and assignees of the estate and effects of any such prisoner who shall obtain his or her discharge in pursuance of this act, from time to time to apply to the court to be established by virtue of this act, that such prisoner may be further examined as to any matters or things relating to his or her estate and effects, either by such court, or by any justice of the peace for the county, riding, division, or place where such prisoner shall then reside; and if such court shall direct any such examination before any such justice, such justice shall send for or call before him such prisoner, by such warrant, summons, ways, or means as he shall think fit; and if such prisoner shall appear before such justice, such justice shall examine him or her, upon oath or otherwise, as to such matters and things as such assignee or assignees shall desire, relating to the estate and effects of such prisoner; and if any such prisoner, on payment or tender of payment of such reasonable charges as such justice shall judge sufficient, shall neglect or refuse to appear before such justice, not having a lawful excuse allowed by such justice, or being come before such justice shall refuse to be sworn, or to answer such questions as by such justice shall be put to him or her, relating to the discovery of his or her

1 G.4. c.119. Prisoners may, after their discharge, be examined as to their estate and effects, on application of assignees.

Such persons refusing to appear or to answer questions, &c.

1 G.4. c.119. estate and effects, vested or intended to be vested in such assignee or assignees as aforesaid, as required by the order of the said court, such justice shall certify such default to the said court; and thereupon, and also in case such prisoner shall neglect or refuse to appear before such court, to be examined by such court, if the court shall think fit so to order, or appearing before such court shall refuse to be sworn, or to answer such questions as shall be put to him or her, relating to the discovery of his or her said estate or effects, then and in any of such cases it shall be lawful for such court by warrant to commit such prisoner so offending to the common gaol of any county or place, there to remain without bail or mainprise, until such time as he or she shall submit himself or herself to such court, and answer upon oath or otherwise, as shall be required, to all such lawful questions as shall by such court be put, or ordered to be put to him or her, for the purposes aforesaid.

Certificate of default.

Committed to county gaol.

Iron and Steel.

[25 G. 3. c. 67.—26 G. 3. c. 89.]

25 G.3. c.67. Not to be exported.

BY stat. 25 *G.* 3. *c.* 67. § 1. No person shall export, or load, pack, or put on board any ship in order to be exported (except to *Ireland*,) or cause the same to be done, or load on board any boat or vessel, or bring to any quay, wharf, or place for the purpose of exporting the same, any tool or utensil, which is or may be used for preparing, working, finishing, or completing the iron or steel manufactures of this kingdom, or any model or plan of any such tools or utensils, or any part thereof, or cause the same to be done; nor shall collect, obtain, make, or apply for any such tools, utensils, or implements, or any part thereof, or any such model or plan, with intent to export the same, on pain of forfeiture thereof, together with the packages, and all other goods packed therewith, which may be seized by any officer of the customs: And on complaint made on the oath of one witness before one justice, he may issue his warrant to bring the person complained of before him or some other justice of the county, &c.; and if such person shall not give such account of the use or purpose to which the same are intended to be appropriated, as shall be satisfactory to the justice, he shall detain such goods, and bind such person to appear at the next assizes or quarter sessions, with reasonable sureties for his appearance; and if he shall neglect or refuse to give such security, the justice may commit him to the common gaol or house of correction until the next assizes or quarter sessions, and until he shall be delivered by due course of law. And in case such person shall be convicted upon indictment or information, he shall forfeit 200*l.* and shall be imprisoned twelve months without bail, in the common gaol or house of correction, and until the forfeiture shall be paid.

§ 2, 3, and 4. Do not relate to justices of the peace.

26 G.3. c.89. Exceptions.

And by stat. 26 *G.* 3. *c.* 89. § 1. [made perpetual by stat. 35 *G.* 3. *c.* 38. § 4.] After reciting that such general prohibition of the exportation of tools and utensils was productive of inconvenience,

&c., it is therefore enacted, that it shall be lawful to export any tools or utensils made use of in the iron or steel manufactures, which might have been legally exported before the passing of the aforesaid act, except those hereafter mentioned, viz.) rollers, either plain, grooved, or of any other form or denomination, of cast iron, wrought iron, or steel, for the rolling of iron, or any sort of metals and frames, beds, pillars, screws, pinions, and each and every implement, tool, or utensil thereunto belonging, rollers, slitters, frames, beds, pillars, and screws, for slitting mills; presses of all sorts in iron, steel, or other materials, which are used with a screw exceeding one inch and a half in diameter; or any parts of these several articles, or any model of any of the utensils or machines aforesaid, or any part thereof, and all sorts of utensils, engines or machines used in the casting or boring of cannon, or any sort of artillery, or any parts thereof, or any model of tools, utensils, engines, or machines used for the like purpose; hand stamps, dog-head stamps, pulley stamps, hammers, and anvils for stamps, presses of all sorts called *cutting-out-presses*, beds and punches to be used therewith, piercing presses of all sorts, beds and punches to be used therewith, either in parts or pieces, or fitted together; scoring or shading engines; presses for horn buttons, dies for horn buttons, rolled metal with silver thereon, parts of buttons not fitted up into buttons, or in an unfinished state: engines for chasing, stocks for casting buckles, buttons, and rings: die-sinking tools of all sorts, engines for making button shanks, laps of all sorts, tools for pinching glass; engines for covering of whips; bars of metals covered with gold or silver; burnishing stones, commonly called *blood stones*, either in the rough state or finished for use. 26 G.3. c.89.

§ 2. And if any person shall have in his possession with intent to export the same any wire moulds for making paper: wheels made of metal, stone, or wood, for cutting, roughing, smoothing, polishing, and engraving glass; purcellas, pincers, shears, and pipes, used in blowing glass; potters' wheels and lathes for plain, round, and for engine-turning tools, used by sadlers, harness-makers, and bridle-makers, namely, cantle-strainers, side-strainers, point-strainers, creasing-irons, screw-creasers, wheel-irons, seat-irons, pricking-irons, bolster-irons, clams and head-knives; the said former act shall be extended to exporters or possessors of the tools and utensils herein described, as fully, to all intents and purposes, as if the same were re-enacted in this act. Person having certain articles in his possession with intent to export.

By stat. 25 *G.* 3. *c.* 67. § 7, 8. all penalties are to be recovered in the courts at *Westminster*, and to be sued for within twelve months. Penalties.

Judgment.

[Stats. 3 G.4. c.114.—4 G.4. c.48.]

OF judgments, some are fixed and stated, as in cases of *treason*, *felony*, *præmunire*, and *misprision*; the particular forms of which may be seen under their respective titles. Judgments certain.

Others are discretionary and variable, according to the different circumstances of each case: thus, for crimes of an infamous nature, such as petit larceny, perjury, or forgery at common law, Judgments variable.

gross cheats, conspiracy, not requiring a villanous judgment, keeping a bawdy-house, bribing witnesses to stifle their evidence, and other offences of the like nature, it seems to be in a great measure left to the prudence of the court to inflict such corporal punishment, and also such fine, and binding to the good behaviour for a certain time, as shall seem most proper and adequate to the offence. 2 *Haw. c.* 48. § 14.

Judgment in the offender's absence.

The court may assess a fine, but cannot award any corporal punishment against a defendant, unless he be actually present in court. 2 *Haw. c.* 48. § 17.

Judgment of a joint fine.

Where there are several defendants, a joint award of one fine against them all is erroneous; for it ought to be several against each defendant; otherwise, one who hath paid his proportionable part might be continued in prison till all the others have also paid theirs, which would be in effect to punish him for the offence of another. 2 *Haw. c.*48. § 18.

Judgment in mitigation of fines.

A fine is under the power of the court during the term in which it is set, and may be mitigated as shall be thought proper: but after the term, it admits of no alteration. 2 *Haw. c.*48. § 20.

Judgment against the verdict.

A judgment contrary to the verdict is void.

Judgment by particular statutes.

By many statutes peculiar punishments are appointed for several offences, as stocks, imprisonment, whipping, and the like; and in all these cases, no room is left for the justices' discretion, for they ought to give judgment and to inflict the punishment in all the circumstances thereof, as such statutes do direct. *Dalt. c.* 188.

4 G.4. c.48.

By stat. 4 *G.*4. *c.*48. intituled, "*An act for enabling courts to abstain from pronouncing sentence of death in certain capital cases,*" after reciting § 1., that whereas it is expedient that in all cases of felony not within the benefit of clergy, except murder, the court before which the offender or offenders shall be convicted shall be authorised to abstain from pronouncing judgment of death, whenever such court shall be of opinion that, under the particular circumstances of any case, the offender or offenders, is or are a fit and proper subject or fit and proper subjects to be recommended for the royal mercy: It is enacted, that from and after the passing of this act, whenever any person shall be convicted of any felony, except murder, and shall by law be excluded the benefit of clergy in respect thereof, and the court before which such offender shall be convicted shall be of opinion that, under the particular circumstances of the case, such offender is a fit and proper subject to be recommended for the royal mercy, it shall and may be lawful for such court, if it shall think fit so to do, to direct the proper officer then being present in court to require and ask, whereupon such officer shall require and ask, if such offender hath or knoweth any thing to say, why judgment of death should not be recorded against such offender; and in case such offender shall not allege any matter or thing sufficient in law to arrest or bar such judgment, the court shall and may, and is hereby authorised to abstain from pronouncing judgment of death upon such offender; and instead of pronouncing such judgment, to order the same to be entered of record, and thereupon such proper officer as aforesaid shall and may, and is hereby authorised to enter judgment of death on record against such offender, in the usual and accustomed form, and in such and the same manner as is now used,

Court may abstain from pronouncing sentence of death on persons convicted of any felonies, except murder.

Record of judgment to have the same effect as if pronounced.

and as if judgment of death had actually been pronounced in open court against such offender, by the court before which such offender shall have been convicted. 4 G.4. c.48.

§ 2. A record of every such judgment, so entered as aforesaid, shall have the like effect to all intents and purposes, and be followed by all the same consequences, as if such judgment had actually been pronounced in open court, and the offender had been reprieved by the court.

§ 3. Nothing herein contained shall extend to that part of the U. K. called *Scotland*. Act not to extend to Scotland.

By stat. 3 *G.* 4. *c.* 114. intituled "An act to provide for the more effectual pun shment of certain offences, by imprisonment with hard labour." Passed 5th of *August*, 1822. 3 G.4. c.114. Persons convicted of the offences herein mentioned, may be sentenced to hard labour.

§ 1. After reciting stat. 53 *G.* 3. *c.* 162. (Vol. III. Larceny,) and that it is expedient that the provisions of the said act should be extended to certain aggravated misdemeanors and offences below the degree of felony: it is enacted, that from and after the passing of this act, whenever any person shall be convicted of any of the offences hereafter specified and set forth; that is to say,

(1.) *Any assault with intent to commit felony.*

(2.) *Any attempt to commit felony.*

(3.) *Any riot.*

(4.) *Any misdemeanor for having received stolen goods, knowing them to have been stolen.*

(5.) *Any assault upon a peace officer, or upon an officer of the Customs or Excise, or upon any other officer of the Revenue, in the due discharge and execution of his or their respective duty or duties, or upon any person or persons acting in aid of any such officer or officers in the due discharge and execution of his or their respective duty or duties.*

(6.) *Any assault committed in pursuance of any conspiracy to raise the rate of wages.*

(7.) *Being an utterer of counterfeit money, knowing the same to be counterfeit.*

(8.) *Knowingly and designedly obtaining money, goods, wares, or merchandizes, bills, bonds, or other securities for money, by false pretences, with intent to cheat any person of the same.*

(9.) *Keeping a common gaming house, a common bawdy house, or a common ill-governed and disorderly house.*

(10.) *Wilful and corrupt perjury, or of subornation of perjury.*

(11.) *Having entered any open or inclosed ground with intent there illegally to destroy, take, or kill game or rabbits, or with intent to aid, abet, and assist any person or persons illegally to destroy, take, or kill game or rabbits, and having been there found at night armed with any offensive weapon.*

"In each and every of the above cases, and whenever any person shall be convicted of any or either of the aforesaid offences, it shall and may be lawful for the court before which any offender shall be convicted, or which by law is authorised to pass sentence upon any such offender, to award and order (if such court shall think fit) sentence of imprisonment *with hard labour*, for any term not exceeding the term for which such court may now imprison for such offences, either in addition to, or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before the passing of this act; and every

such offender shall thereupon suffer such sentence, in such place and for such time as aforesaid, as such court shall think fit to direct."

Jurors.

NOTE.—The statutes 4 & 5 *W.* *c.* 24., and 7 & 8 *W.* *c.* 32] hereafter following, were at first, only temporary, but are referred to, and as it were adopted by stat. 3 *G.* 2. *c.* 25.; which stat. is made perpetual by stat. 6 *G.* 2. *c.* 37. And all the said three acts of 4 & 5 *W.*, 7 & 8 *W.*, and 3 *G.* 2. are required to be read at every *Midsummer* sessions.

Trial by juries is the *Englishman's* birth-right, and is that happy way of trial, which, notwithstanding all revolutions of times, hath been continued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of this state, and one of the pillars of it, both as to age and consequence. *Tr. p. Pais,* 3. *Dalt. c.* 186. See *De Lolme, p.* 287. 3 *Blac. Com.* 379.

9 H. 3. c. 29. And this grand bulwark of the liberties of every *Englishman* is secured to him by the great charter; *nullus liber homo capiatur, vel imprisonetur, aut exulatur, aut aliquo alio modo destruatur, nisi per legale judicium parium suorum vel legem terræ.*"

Concerning which I will treat in the order following:

§ I. *Who may or may not be Jurors.*

[13 Ed. 1. *West. Sec.* c. 38.—27 Ed. 3. st. 2. c. 8.—28 Ed. 3. c. 13.—8 H. 6. c. 9.—c. 29.—1 R. 3. c. 4.—3 H. 7. c. 1.—19 H. 7. c. 13.—5 H. 8. c. 6.—23 H. 8. c. 13.—13 & 14 C. 2. c. 11.—1 W. c. 18.—4 & 5 W. c. 24—6 & 7 W. c. 4.—7 & 8 W. c. 32.—c. 34.—1 An. st. 2. c. 13.—10 An. c. 14.—3 G. 2. c. 25.—4 G. 2. c. 7.—18 G. 2. c. 15.—19 G. 3. c. 44.]

II. *Of making and returning Lists of Jurors.*

[7 & 8 W. c. 32.—8 & 9 W. c. 10.—3 & 4 An. c. 18.—3 G. 2. c. 25.

III. *Of the Sheriffs summoning and returning Jurors.*

[35 H. 8. c. 6.—4 & 5 P. & M. c. 7.—27 Eliz. c. 7.—4 & 5 W. c. 24.—7 & 8 W. c. 32.—3 & 4 Ann. c. 18.—4 Ann. c 16.—10 Ann. c. 14.—3 G. 2. c. 25.—4 G. 2. c. 7.—24 G. 2. c. 18.—29 G. 2. c. 19.—28 G. 3. c. 38.—1 & 2 G. 4. c. 46.

IV. *Of the Challenge of Jurors.*

[For the statutes see this section in its place.]

V. *Of the Demeanor of Jurors in giving their Verdict.*

[32 G. 3. c. 60.]

VI. *Of the Indemnity and Punishment of Jurors.*

[5 Edw. 3. c. 10.—34 Edw. 3. c. 8.—38 Edw. 3. st. 1. c. 12.—3 H. 7. c. 1.—23 H. 8. c. 3.—3 G. 2. c. 25.

I. Who may or may not be Jurors.

Mr. *Hawkins* says, it doth not seem to be any where holden that none but freeholders ought to be returned on a grand jury. 2 *Haw. c.* 25. § 19. Who may be grand jurymen.

But in another place he says, that by the common law, every grand juryman ought to be a freeman. 2 *Haw. c.* 25. § 16.

And Ld. *Hale* says, touching the yearly value of the estate of grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 *Hale*. 155. As to their estate.

In a case reserved by Mr. Justice *Lawrence*, from the *Oxford Circuit* in 1810, the judges held that grand jurors are not positively required to be freeholders *MS. C. C. R.* See *Lamb.* 382.

But by stat. 7 & 8 *W.* 3. *c.* 32. § 8., in *Yorkshire*, they ought to have 80*l.* a year, freehold or copyhold. In Yorkshire.

Also a grand juryman must be a lawful liege subject; and consequently, neither under attainder of any treason or felony, or an alien, nor outlawed whether for a criminal matter, or, as some say, in a personal action; and from hence it seems that any one who is under a prosecution for any crime may, by the common law, before he is indicted, challenge any of the persons returned on the grand jury for the defect of any of the qualifications abovesaid. 2 *Haw. c.* 25. § 16. As to their being under attainder, alien, or outlawed; or under prosecution.

The grand jury ought not to consist of an indefinite number; for no more ought to be sworn than twenty-three. For if a number amounting to two full juries or more should be sworn, it might happen that a complete jury of twelve might find a bill to be true, though other twelve or more of the same jury might reject it as untrue; which would be inconvenient and absurd. 2 *Burr.* 1088. Their number.

By stat. 3 *G.* 2. *c.* 25. § 19, 20. In the courts at *Westminster* and city of *London*, the jurors should be householders within the city, and have lands, tenements, or personal estates, to the value of 100*l.* In the courts at Westminster.

And by stat. 4 *G.* 2. *c.* 7. § 3. Leaseholders in the county of *Middlesex*, where the improved rents or value shall amount to 50*l.* a-year over and above the ground rent or other reservations, shall be liable to serve on juries. In Middlesex.

By stat. 4 & 5 *W.* 3. *c.* 24. § 15. 3 *G.* 2. *c.* 25. § 20. At the assizes or sessions in the country, every juror, other than strangers *per medietatem linguæ* in *England*, shall have in his own name or in trust for him within the county 10*l.* a-year, and in *Wales* 6*l.* a-year, above reprises, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, or in all or any of them, in fee simple, fee tail, or for the life of themselves, or some other person; and if any of a lesser estate be returned, he may be discharged upon challenge, or on his own oath. At the assizes or sessions. Their qualifications; freehold, copyhold.

And by stat. 3 *G.* 2. *c.* 25. § 18. Persons having an estate in possession in land in their own right of 20*l.* a-year above the reserved rent, being held by lease for five hundred years or more, or for ninety-nine years, or any other term, determinable on one or more lives, shall be liable to serve on juries. Leasehold.

From hence it appears that lands, *freehold*, *copyhold*, *ancient demesne*, or *leasehold*, do render persons liable to serve on juries. And some have thought that all lands are included under these denominations. In *Coke's Copyholder*, § 17. it is said, that what land soever is not copyhold, is freehold. And in *Calth.* 41. it is said that copyhold lands may differ in name, but not in nature; for although copy-

hold lands be specially so called, because holden by copy of court roll, and customary lands by some special custom, yet they are all holden in one general kind, that is, by custom, and the diversity of their names doth not alter the nature of their tenure. Nevertheless although all copyhold lands are customary, yet all customary lands are not copyhold, and consequently, as such, do not qualify a man to serve on juries. Of which kind of customary lands not being copyhold the greater part of the county of *Westmoreland* in particular doth consist. For which cause (and by reason of the number of persons disqualified by being quakers) the jurors in that county are in comparison but few. To remedy which inconvenience, it seemeth not unreasonable that in the statutes limiting the qualification of jurors, amongst other denomination of tenure, the word *customary* should be inserted; for why should a copyholder of 10*l.* a-year be obliged to serve, and a customary tenant of 100*l.* a-year be exempted?

On trials of foreigners.

As to the strangers *per medietatem linguæ* above mentioned, it is enacted by stat. 28 *Edw.* 3. *c.* 13. that in inquests to be taken amongst aliens and denizens before any judges, one half of the inquest shall be denizens, and the other half aliens, if so many there be in the place who are not parties; if not, then so many as there are.

And by stat. 27 *Edw.* 3. *st.* 2. *c.* 8. Before the mayor of the staple, if both parties be strangers, the inquest shall be taken by strangers; if both be denizens, by denizens; if the one party be denizen, and the other alien, half of the jury shall be denizens and half aliens.

And these aliens need not have any qualification by their estate. 8 *H.* 6. *c.* 29.

But it seems that the *English* half of the jury ought to have estates of the same value as in other cases. 2 *Haw.* *c.* 43. § 35.

On trials for forfeited ships or goods.

And by stat. 13 & 14 *C.* 2. *c.* 11. § 11. In actions concerning tonnage and poundage, or ships or goods to be forfeited by reason of unlawful importation or exportation, there shall not be any party jury, but such only as are natural-born subjects.

In towns corporate.

In towns corporate, trials of felons shall be by men worth 40*l.* in goods, though they have no freehold. 23 *H.* 8. *c.* 13.

And in 3 *Salk.* 81. it is said that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the statutes which require jurors to be of such and such sufficiency, do generally except cities, boroughs, and towns corporate.

In the torn.

By stat. 1 *R.* 3. *c.* 4. In the torn Jurors shall have 20*s.* a-year freehold; or 26*s.* 8*d.* copyhold.

In the leet.

In the leet, it is said by some books that any person happening to be present at a court leet, or to be riding by the place where it is holden, may, for the want of jurors, be compelled by the steward to be sworn, whether he be resident within the precinct of the leet or not, by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 *Haw.* *c.* 10. § 68.

On the coroner's inquest.

The coroner's jury, upon inquest taken before him, are to be of the neighbouring towns; but no qualification by estate is required by any statute. 2 *Hale*, 152.

On other jurors concealing presentments.

By stat. 3 *H.* 7. c. 1. Jurors to enquire of the concealments of other inquests shall have lands of 40*s.* a-year.

By stat. 8 *H.* 6. *c.* 9. Jurors to enquire of forcible entry or detainer shall have lands or tenements of 40*s.* a-year. On enquiries forcible entry

By stat. 19 *H.* 7. *c.* 13. Jurors to enquire of riots shall have 20*s.* a-year, charter land, or freehold; or 26*s.* 8*d.* copyhold. On enquiries riots.

By stat. 1 *An. stat.* 2. *c.* 13. § 3. In *Yorkshire*, no person having 150*l.* a-year, of such estate as will qualify him to serve on juries shall be summoned to the sessions; but only persons less liable to bear the expense of attending the assizes. In Yorkshire at sessions.

And by stat. 10 *An. c.* 14. § 6. If he doth serve at the sessions it shall not satisfy his turn, but he shall attend the assize nevertheless.

By stat. 7 & 8 *W.* 3. *c.* 32. § 4. Young men under twenty-one years of age shall not serve upon juries. Minors.

By stat. 13 *Ed.* 1. *stat.* 1. *c.* 38. Old men *above seventy*, persons continually sick, or being diseased at the time of the summons, or not dwelling in the county, shall not be put on juries of petit assizes; on pain of the sheriff paying damages to the party grieved, and being amerced to the king. Persons above age, infirm, absent.

And the equity of this statute, and also the reason of the thing, seem plainly so far to extend to grand juries, that if it shall appear that any of the persons above mentioned be returned on a grand jury, the court will easily excuse their non-appearance. But it seems clear that any such persons being returned on a grand jury may lawfully serve upon it if they think fit. 2 *Haw.* *c.* 25. § 20.

The jury ought to be men; yet there shall be a jury of women, to try if a woman be *enceinte*, upon the writ *de ventre inspiciendo*. *Tri. per Pais*, 86. In what case women shall be jurors.

By stat. 5 *H.* 8. *c.* 6. and 18 *G.* 2. *c.* 15. Freemen of the company of surgeons in *London* are exempted from serving upon juries. Surgeons.

By stat. 6 & 7 *W.* 3. *c.* 4. § 2, 3. Apothecaries within *London* and seven miles thereof, being free of the company, and country apothecaries, who have served seven years' apprenticeship, shall be exempted from serving on juries, and their return shall be void, unless they shall voluntarily consent to serve. Apothecaries.

Clergymen cannot be impanelled upon juries. *Lamb.* 396. Clergymen.

By stat. 1 *W.* 3. *c.* 18. § 11. 19 *G.* 3. *c.* 44. Dissenting teachers, qualified under the toleration act, are exempted from serving on juries. Dissenting teachers.

Also quakers by stat. 7 & 8 *W.*, *c.* 34. § 6. Quakers.

By stat. 4 & 5 *W. c.* 24. § 21. No writ *de non ponendis in assisis et juratis* shall be granted, unless upon oath made, that the suggestions upon which it is granted are true. Writs of exemption.

And the jurors ought to come in person and claim their privilege; for the sheriff cannot return it. *Tri. per Pais*, 87. Claim of privilege.

§ II. Of making and returning Lists of Jurors.

By stats. 7 & 8 *W.* 3. *c.* 32. § 4. 8 & 9 *W.* 3. *c.* 10. 3 & 4 *An.* *c.* 18. § 5. The justices at *Midsummer* sessions shall issue forth their warrants (A) under the hands and seals of two or more of them to the high constable and constables, requiring him or them to issue forth his or their precept to the petty constables, thereby directing and requiring them to convene and meet together with the said head constables within fourteen days next after the date of such receipt, at some usual convenient place in the Precepts to the high and petty constable. A.

hundred, where the constables shall make and return true lists in writing signed by them, of the names and places of abode of all persons within their respective constablewicks qualified to serve on juries, with their titles and additions, between the ages of twenty-one and seventy, which list the said constable shall return at the *Michaelmas* sessions yearly, or at the adjournment day in open court. High constable failing to issue his precept shall forfeit 10*l.* on conviction at the assizes or sessions, and the constable failing to meet the head-constable and to prepare his list shall forfeit 5*l.*

Summoning exempted persons.

But if the inhabitants of a hundred have enjoyed an immemorial exemption from serving on juries, they are not liable to be summoned under any of the different statutes relative to jurors; wherefore a high-constable who disobeyed an order of sessions for summoning such inhabitants was acquitted on an indictment on stat. 3 & 4 *An. c.* 18. § 5. *Rex* v. *Pugh*, 1 *Doug.* 188.

Petty constables may inspect the poor rates, &c.

By stat. 3 *G.* 2. *c.* 25. § 1. The petty constables, on request made to any parish officer who shall have in his custody any of the rates for the poor or land tax, shall have free liberty to inspect such rates, and take from thence the names of freeholders, copyholders, or other persons qualified to serve on juries, dwelling within their respective parishes or precincts.

Lists to be put upon the church door.

§ 1. And shall yearly, twenty days at least before *Michaelmas*, upon two or more *Sundays* fix on the door of the church, chapel, and every other public place of religious worship, an exact list of persons intended to be returned to the quarter sessions; and shall leave at the same time a duplicate thereof with a churchwarden, chapelwarden, or overseer, to be perused by the parishioners without fee, to the end that notice may be given of persons qualified who are omitted, or of persons inserted by mistake who ought to be omitted.

Penalty on the petty constable for inserting persons wrongfully.

§ 2. And if such petty constable shall wilfully omit any person who ought to be inserted, or insert any one who ought to be omitted, or shall take any reward for omitting or inserting any person, he shall, for every person so omitted or inserted, forfeit 20*s.* on conviction before one justice, on confession, or oath of one witness; half to the informer, and half to the poor of the parish or place for which the list is returned; if not paid in five days, to be levied by distress and sale, returning the overplus, if any. And such justice shall, in writing under his hand, certify the same to the next sessions, who shall direct the clerk of the peace to insert or strike out the name of such person so omitted or inserted wrongfully.

Lists to be delivered in at the sessions.

By stat. 7 & 8 *W.* 3. *c.* 32. § 4. The said petty constables at *Michaelmas* sessions shall deliver in the lists in open court. (*Vide ante*, p. 99.)

Or to the high constable.

Or by stat. 3 *G.* 2. *c.* 25. § 7. Instead of this, after they have completed their lists, it shall be sufficient if they subscribe the same in the presence of one justice, and at the same time attest the truth thereof upon oath to the best of their knowledge or belief: and then the said list being first signed by the justice, and subscribed as aforesaid, shall be delivered by the said petty constables to the high constables, who shall deliver in the same at the said sessions in open court, attesting at the same time upon oath the receipt of such lists from the petty constables, and that no alteration hath been made therein since their receipt thereof.

By stat. 7 & 8 *W.* 3. *c.* 32. § 4. The constable failing to make return shall forfeit 5*l.* to the king, to be recovered by bill, plaint, or information.

Penalty on petty constables for not returning lists.

And by stat. 3 *G.* 2. *c.* 25. § 1. If any person, not qualified, shall find his name mentioned in such list, and the person required to make such list shall refuse to omit him, or think it doubtful whether he ought to be omitted, the justices at the sessions to which the lists shall be returned, on satisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be struck out, or omitted to be entered in the book.

3 G. 2. c. 25. Persons not qualified, how discharged.

By stat. 7 & 8 *W.* 3. *c.* 32. § 4. The justices shall then cause the lists to be fairly entered in a book by the clerk of the peace, to be by him provided and kept for that purpose amongst the records of the sessions.

Lists to be entered by the clerk of the peace;

By stat. 3 *G.* 2. *c.* 25. § 2. The clerk of the peace neglecting his duty herein shall forfeit 20*l.* to him who shall sue by indictment at the sessions.

on pain of 20l.

§ 2. Duplicates of the said lists, when delivered in at the sessions, and entered in such book to be kept by the clerk of the peace for that purpose, shall, during the said sessions or within ten days after, be delivered by the clerk of the peace to the sheriff.

Duplicates thereof to be delivered to the sheriff.

§ 2. And the sheriff shall immediately take care that the names shall be entered alphabetically, with their additions and places of abode, in a book to be kept by him for that purpose.

The same to be entered by the sheriff.

§ 3. If the sheriff shall summon and return any person to the assizes, whose name is not in the duplicates, the judge may on examination in a summary way fine him not exceeding 10*l.* nor less than 40*s.*

Sheriff shall return none but those in the duplicates.

§ III. Of the Sheriff's summoning and returning Jurors.

By a clause in the commission of the peace it is said, we command our sheriff that at certain days, which you (the justices) shall make known to him, he cause to come before you so many and such good and lawful men of his bailiwick (as well within the liberties as without) by whom the truth shall be the better known and enquired into.

Sheriff to summon jurors to the sessions.

It seems that justices of the peace may not order a jury to be returned immediately, nor on the same day, for the trial of a prisoner arraigned before them, as justices of gaol delivery may, unless the crime amount to felony, or the party consent to be tried immediately. 2 *Haw. c.* 4. § 4.

Whether the sessions may order a jury to be returned immediately.

Also it seems that a jury may not regularly be returned before justices of the peace in their sessions by a bare award of the court, as before justices of gaol delivery; but that there ought to be a particular precept to the sheriff for that purpose. 2 *Haw. c.* 4. § 1.

Whether by award of the court without precept.

But in cases of felony it is agreed (4 *Inst.* 164.) and is the usual practice, after the prisoners are arraigned and have pleaded to the country, for the justices to issue a precept to the sheriff, in nature of a *venire facias*, which may bear teste the same day that the prisoners plead, commanding the sheriff to return twenty-four jurors to try the issue upon such a day; or they make it returnable the

How they may do the same in cases of felony

same day that the prisoner pleads, as at the hour of one in the afternoon, or the like; and this precept must be in the name and under the seals of the justices or two of them (1 Q.), and not barely upon the award of the roll. 2 *Hale*, 261, 262.

Form of the venire facias.

The writ of *venire facias* by stat. 4 & 5 *W.* *c.*24. § 15. shall be after this form; *The king*, &c. *We command*, &c. *that you cause to come before*, &c. *twelve free and lawful men of the vicinage of* A. *every of whom shall have* 10*l.* *of land, tenements, or rents, by the year, at least; by whom*, &c. *and who neither*, &c. (B.)

B.

Why the jurors shall be returned of the neighbourhood.

The reason why they are required to come from the vicinage is, for that the neighbours are presumed to know what is done in the neighbourhood. 1 *Inst.* 158.

But yet this is not necessarily required; for they of one side of the county are, by law of the (*visne* or) neighbourhood, to try an offence of the other side of the county. 2 *Hale*, 264.

And by stat. 4 *An.* *c.* 16. § 6, 7. and 24 *G.* 2. *c.* 18. § 3. To prevent challenges for default of hundredors, every *venire facias* for the trial of an issue in any action in the courts at *Westminster*, or in any action or information on the penal statute, shall be awarded of the body of the county where such issue is triable.

Upon the wool act.

By the wool act, 28 *G.* 3. *c.*38. § 74. The jury to try any action or information under the act shall be freeholders, to be summoned out of any other county *than that wherein the fact shall be committed.*

How many shall be returned and serve.

And although the words of the writ be twelve, yet by the ancient course, the sheriff must return twenty-four, for the expedition of justice; for if twelve only should be returned, there would seldom a full jury appear; and in this case usage and custom make the law. 2 *Hale*, 263.

Sessions.

But the general precept that issues before a session is, to return twenty-four, and commonly the sheriff returns upon that precept forty-eight. 2 *Hale*, 263.

3 G.2. c.25. Nisi prius.

But by stat. 3 *G.* 2. *c.* 25. § 8. In issues of *nisi prius*, the sheriff shall upon his return of the writ of *venire facias juratores* (unless in causes intended to be tried at bar, or where a special jury shall be appointed) annex a panel to the said writ containing the christian and surnames, additions and places of abode of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every *venire facias*, for the trial of all issues at the same assizes; which number of jurors shall not be less than forty-eight in any county, nor more than seventy-two, unless the judges shall order otherwise. And the writs of *habeas corpora juratorum*, or *distringas*, subsequent to such writ of *venire facias juratores*, need not have inserted in the bodies of such writs the names of all the persons contained in such panel, but it shall be sufficient to insert in the mandatory part of such writs respectively *the bodies of the several persons named in the panel annexed to this writ*, or words of the like import, and to annex to such writs respectively panels, containing the same names as were returned in the panel to such *venire facias*, with their additions and places of abode, that the parties concerned in any such trials may have timely notice of the jurors who are to serve at the next assizes, in order to make their challenges to them, if there be cause; and the persons named in such panels shall be summoned at the next assizes, and no other. It is true, this gives them an opportunity of knowing how to make their challenges; but it also gives them an opportunity to another

purpose, namely, of labouring the jurors, — a practice which cannot be too much discouraged.

By stat. 3 *G.* 2. *c.* 25. § 9. In *Wales* the sheriff shall summon out of every hundred or commote not less than ten, nor more than fifteen; unless the judges shall order otherwise. Wales.

§ 10. And in the counties palatine, the sheriff shall summon not less than forty-eight nor more than seventy-two (unless the judges order otherwise); and shall, eight days before the courts be held, cause a list to be made of the persons summoned, their additions and places of abode, which shall be hung up in the sheriff's office, to be inspected by any person.

Upon the grand jury, there may be, and usually are, more than twelve; but if there be twelve assenting, though others dissent, it is not necessary for the rest to agree. 2 *Hale*, 161. Number of the grand jury.

But upon a trial by a petit jury, it can be by no more nor less than twelve, and all assenting to the verdict. 2 *Hale*, 161. Petit jury.

By stat. 7 & 8 *W.* 3. *c.* 32. § 8. In the county of *York*; only one panel of forty-eight freeholders and copyholders, and no more, shall be returned to serve on the grand inquest at the assizes; and at the sessions not above forty, either upon the grand inquest or other service there. In the county of York.

§ 5. Every summons of jurors shall be made by the sheriff, his officer, or lawful deputy, six days before at the least, (and in *Wales* eight days before, and in the counties *palatine* fourteen days before, stat. 3 *G.* 2. *c.* 25. § 9, 10.) shewing to every person so summoned the warrant under the seal of the office wherein they are nominated and appointed to serve; and if such juror be absent from the place of his habitation, notice of the summons shall be given by leaving a note thereof in writing under the hand of such officer, at the dwelling-house of such juror, with some person there inhabiting in the same. Time and manner of summons.

By stat. 7 & 8 *W.* 3. *c.* 32. § 6. If the sheriff, under sheriff, bailiff, or other person neglect their duty herein, or excuse any person for favour or reward; he shall forfeit 20*l.* to him who shall sue. Or by 3 *G.* 2. *c.* 25. § 6. He may be fined 10*l.* or under, by the judge or judges of assize, great sessions, or sessions for the county palatine. Penalty on the sheriff or bailiff neglecting or misbehaving.

And by stat. 3 *G.* 2. *c.* 25. § 6. No bailiff or other officer shall summon any person other than such whose name is specified in a mandate signed by the sheriff or under sheriff, and directed to such bailiff or other officer; on pain of 10*l.* on a summary conviction before the judge of assize.

In *R.* v. *Whitaker*, 2 *Cowp.* 752. the defendant was summoning bailiff to the sheriff of *Middlesex*, and it was his province to summon jurors to attend to try causes. An attachment was granted against him, upon a charge of *demanding* and *receiving* money from several of the inhabitants to excuse them from serving, and for summoning such as refused to pay him more frequently than it came to their turn. Being examined upon interrogatories, it appeared to the court, upon the report of Sir *James Burrow*, that he admitted having received small sums from several individuals; That in some years he had received in the whole about sixty or seventy pounds; and in every year something, though sometimes not more than twenty pounds. But he *denied* ever having *demanded* it, or having ever been guilty of *partiality*, either

in excusing those who paid him, or in summoning those more frequently than he ought to have done who refused to pay him. He swore he received it only as *a Christmas-box*, which had been customary, and in no other view whatever; and positively denied that he ever acted with any partiality in consequence of its being given or refused. The court thought this to be a very bad practice, and of very evil example; wherefore they fined him two hundred pounds, and ordered him to be committed till paid. They added, that the sheriff should be informed of this, and that it should be recommended to him to discharge this man from his office of summoning bailiff.

Upon the trial of an information for a libel by a special jury, only ten jurors attended, and it was discovered, after the trial, that two of those who did not attend had not been summoned; but upon motion for a new trial, there being no suggestion that the omission by the sheriff was the effect of collusion or an improper practice, or to have been prejudicial to the defendant; the court, as a matter entirely in their discretion, refused the rule. *Rex* v. *Hunt*, *E.* 2 *G.* 4. 4 *B.* & *A.* 430.

How often they shall be summoned and serve.

By stat. 3 *G.* 2. *c.* 25. § 4. No persons shall be returned as jurors on trials at the assizes, who have served within one year before in the county of *Rutland*, or four years in the county of *York*, or two years before in any other county (not being a county of a city or town); on pain that the sheriff, on examination and proof in a summary way, shall be fined by the judge not exceeding 5*l.* for each offence.

Sheriff's book.

§ 5. And the sheriff shall enter in a book the names of such persons as shall be summoned and shall serve at the assizes, with their additions and places of abode, alphabetically, and the times of their services; and every person who hath served, shall (on application by him made to the sheriff) have a certificate *gratis*, testifying his attendance; and the said book shall be transmitted to the succeeding sheriff.

How often jurors shall be summoned in the county of *York*.

By stats. 7 & 8 *W.* 3. *c.* 32. § 7. 10 *An.* *c.* 14. § 5. In the county of *York* they shall not be returned above once in four years, at the assizes or sessions.

Penalty on sheriff of *York* for not keeping his book;

And by stat. 3 & 4 *An.* *c.* 18. § 3. If the sheriff of the county of *York* neglect to keep such book as above, or to enter the names, or to deliver over to his successor the entries made for four years next before, or to deliver the certificate *gratis*, he shall forfeit 100*l.*, half to the king and half to him that shall sue.

And for not duly discharging a summons.

§ 4. And if he shall summon or return any juror, who shall have served within four years, and shall not on producing the certificate, discharge the summons or return, and thereof give notice to the party summoned six days before the assizes or sessions, he shall forfeit 20*l.* to the party, with full costs.

1 & 2 G. 4. c. 46.

By stat. 1 & 2 *G.* 4. *c.* 46. § 1. After reciting that whereas the jurors returned by sheriffs and other officers, for the trial of causes at the assizes of the several counties in *England* and *Wales*, and the counties palatine of *Chester*, *Durham*, and *Lancaster*, are by law compelled to remain and continue in attendance from the beginning of the assizes, in the counties aforesaid, to the end thereof: and whereas, from the great length of time that the assizes frequently last in many of the counties of *England* and *Wales*, and the counties palatine of *Chester*, *Durham*, and *Lan-*

caster, the attendance of jurors from the beginning to the end of the assizes, is in many cases extremely burthensome and expensive to the said jurors: for remedy whereof it is enacted, "that from henceforth, in any county in which the judge or justices of assize in *England*, or the judge or justices of the grand sessions in any county of *Wales*, or the justices of the courts of sessions held for the counties palatine of *Chester*, *Durham*, or *Lancaster*, shall think fit so to direct, the sheriff or other officer to whom the return of the *venire facias juratores* or other process for the trial of causes at *nisi prius* doth belong, shall summon and impanel not more than one hundred and forty-four jurors, or such lesser number as the judge or justices of assize in *England*, or the judge or justices of assize of the grand sessions in *Wales*, or the justices of the courts of sessions in the counties palatine of *Chester*, *Durham*, or *Lancaster*, shall think fit to direct, to serve indiscriminately on the criminal and civil side; and shall divide such jurors equally into two sets, the first of which set shall attend and serve for so many days at the beginning of each assizes, as the judge or justices of assize in *England*, or the judge or justices of the grand sessions in *Wales*, or the justices of the courts of sessions in the counties palatine of *Chester*, *Durham*, or *Lancaster*, shall before or at the commencement of such assizes respectively think fit to direct; and the other of which sets shall attend and serve for the residue of such assizes."

1 & 2 G. 4. c. 46.

Judge of assize, &c. may direct two sets of jurors to be summoned, one to attend at the beginning of each assizes, and the other to attend the residue thereof, to serve indiscriminately on the criminal and civil side.

§ 2. Such sheriff or other officer shall, in the summons to the persons in each of such sets, require the attendance of such persons at the said assizes generally, according to the mode now in use, but upon the back of each summons he shall indorse whether the person named therein is in the first or second set, and shall specify at what time the attendance of such person will be required.

Attendance of jurors to be required generally, but summons shall be indorsed either for the first or second set.

§ 3. Every such attendance and service of such jurors shall entitle such jurors to the like certificates and exemptions as they have been heretofore entitled to, for their attendance and service during the whole assizes.

Such jurors to have certificates and exemptions as heretofore.

§ 4. The sheriff or other officer to whom the return of the *venire facias juratores* or other process for the trial of causes at *nisi prius* doth belong, shall, upon his return of every such writ or process, annex thereto a panel, containing the christian and surnames, additions and places of abode of the persons in each of such sets; and during the attendance and service of the first of such sets, the jury on the civil side shall be drawn from the names of the persons in that set, and during the attendance and service of the second of such sets, from the names of the persons in such second set.

Juries for trial of causes at Nisi Prius to be drawn from the set in attendance.

By stat. 4 *G.* 2. *c.* 7. § 2. In the county of *Middlesex*, no person shall be returned to serve as a juror at any sessions of *nisi prius*, who hath been returned in the two terms or vacations next before; on pain of the sheriff being fined by the judge 5*l.* or under.

How often they shall be summoned in Middlesex.

And by stat. 7 & 8 *W. c.* 32. § 9. The inhabitants of the city and liberty of *Westminster* shall be exempted from serving in any jury at the sessions for *Middlesex*, by reason of their attendance at the courts of *Westminster-hall*.

In Westminster.

Jury of view.

By stat. 4 *An.* c. 16. § 8. In any actions brought in the courts of *Westminster*, where it shall appear to the court that it is necessary that the jurors shall have the view of the place in question, they may order special writs of *distringas* or *habeas corpora* to issue, by which the sheriff shall be commanded to have six out of the first twelve of the jurors, or some greater number of them at the place in question, some convenient time before the trial; who shall have the matters in question shewn to them by two persons in the said writs named; and the sheriff by a special return upon the same, shall certify that the view hath been had according to the command of the said writ.

And by stat. 3 *G.* 2. *c.* 25. § 14. Where a view shall be allowed, six or more of the jurors in the panel, who shall be consented to by the parties on both sides or their agents, or if they cannot agree, by the proper officer, or, if need be, by a judge of the court,—shall have the view, and shall be first sworn, or such of them as appear, before any drawing, and others shall be drawn to make up the number.

The usual way of granting views now is on the parties entering into a rule by consent, that in case no view be had (as if no jurors attend,) or if a view be had by any of the jurors (though not being six of the first twelve,) yet the trial shall proceed, and no objection be made on account thereof, or for want of a proper return. 1 *Burr.* 256.

Striking a special jury.

In *T.* 8 *W.* 3. 1 *Salk.* 405. A rule was made, that when the master is to strike a jury, *viz.* forty-eight out of the freeholders' book, he shall give notice to the attornies on both sides to be present; and if the one comes and the other does not, he that appears shall, according to the ancient course, strike out twelve, and the master shall strike out other twelve for him that is absent.

But if by rule of court the master is ordered to strike a jury, in case it be not expressed in such rule that the master shall strike forty-eight, and each of the parties shall strike out twelve, the master is to strike twenty-four, and the parties have no liberty to strike out any. *Anon.* 1 *Salk.* 405. *M.* 8 *W.* 3.

Fees of special jury. Costs of the cause how regulated.

And by stat. 3 *G.* 2. *c.* 25. § 16. The party who shall apply for a special jury to be struck shall pay the fees for the striking such jury, and shall not be allowed the same on taxation: And also by stat. 24 *G.* 2. *c.* 18. § 1., shall pay all the expences occasioned by the trial of the cause, and shall have no other allowance for the same upon taxation of costs than he would be entitled to if the cause had been tried by a common jury; unless the judge shall in open court certify upon the back of the record that the same was a cause proper to be tried by a special jury.

Judge's certificate.

Fee to special jurors.

§ 2. And no person who shall serve upon a special jury shall be allowed more than the sum which the judge shall think reasonable, not exceeding one guinea, except in causes wherein a view is directed.

No special jury in treason or felony.

On a motion for a special jury, in the case of *R.* v. *Macartney*, for the murder of the duke of *Hamilton*, (*T.* 2 *G.* 1. 21 *Vin. Abr.* 301.) It was holden by *Parker* C. J. that there cannot be a special jury in cases of *treason* or *felony*; for the party must have the advantage of challenging twenty in case of felony, and thirty-five in case of high treason, without cause shewn. In cases of special juries, there are forty-eight brought before the master, and he takes twenty-four; so

there cannot be a rule for a good jury, nor for a special jury, in this case of trial at bar; for the jury will be the same with or without such a rule, for they are all good juries in *Middlesex*, and so in all cases of jurors at the bar; and if there should be a special jury, it would take away the advantage the party has of challenging peremptorily, although not of shewing cause. So no rule was made in this case, lest the sheriff in all other cases, when there is no such rule, should not return a good jury.

Tales-men.

By stat. 35 *H.* 8. *c.* 6. § 6. When a full jury at *nisi prius* (or on indictments, informations, or other actions on penal statutes, 4 & 5 *P.* & *M. c.* 7.) shall not appear, or shall be reduced below the number by challenge, the judges, on request of the plaintiff (or defendant, 14 *El. c.* 9.) may command the sheriff to appoint so many other able persons of the county, then present at the assizes, as shall make up a full jury; whose names shall be annexed to the panel.

Their estate.

And by stat. 4 & 5 *W. c.* 24. § 18, 19. These tales-men (*tales de circumstantibus*) shall have each 5*l.* a-year of like estate as other jurors; in *Wales* 3*l.*

Whence they shall be taken.

Upon an award of tales at *nisi prius*, it is not necessary that the tales should be selected out of the persons accidentally present; they may be selected out of persons whose presence the sheriff or coroner has taken previous means to obtain. *S. C.*

But by stat. 7 & 8 *W. c.* 32. § 3. Tales-men in *nisi prius* shall be returned out of the other panels returned to serve at the same assizes.

Challenges.

And by stat. 35 *H.* 8. *c.* 6. § 7. The parties may have their challenges to the tales as to other jurors.

Penalty on sheriff as to tales-men.

By stat. 4 & 5 *W. c.* 24. § 20. No fee shall be taken by any sheriff, clerk of assize, or any other person, for the return of any tales, or upon the account of any tales returned; on pain of 10*l.*, half to the prosecutor, and half to the king.

Addition to be returned.

By stat. 27 *El. c.* 7. No sheriff shall return any juror without the addition of his dwelling, or some other addition by which he may be known; and no extract of issues shall be delivered out without such addition, on pain of five marks to the king, and five marks to the party grieved; to be recovered in sessions or elsewhere.

Penalty of recording persons who did not appear.

By stat. 3 *G.* 2. *c.* 25. § 3. If the clerk of assize, or other officer, shall record the appearance of any person who did not appear, he shall, on conviction before the judge of assize in a summary way, forfeit not exceeding 10*l.* nor under 40*s.*

Drawing jurors' names for trial.

§ 11, 12. Last of all; The name of each person summoned to try the issues of *nisi prius*, with his addition and place of abode, shall be written in several and distinct pieces of parchment or paper, as near as may be of equal size and bigness, and delivered to the marshal by the under-sheriff or his agent. And the same shall by the direction and care of the marshal be rolled up, all, as near as may be, in the same manner, and put together in a box or glass to be provided for that purpose. And when any cause shall be brought on to be tried, some indifferent person by direction of the court shall in open court draw out twelve of the said parchments or papers one after another. And if any of the persons whose names shall be so drawn shall not appear, or be challenged and set aside, then such further number, until twelve be drawn

3 *G.*2. c.25. who shall appear, and after all cause of challenges shall be allowed as fair and indifferent. And the said twelve persons so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the cause. And the names of the persons so drawn and sworn, shall be kept apart by themselves in some other box or glass to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until such jury shall by consent of the parties or leave of the court be discharged. And then the same names shall be rolled up again, and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn. And so *toties quoties*, as long as any cause remains then to be tried. Provided, that if any cause shall be brought on to be tried before the jury in any other cause shall have brought in their verdict, or be discharged, the court may order twelve of the residue of the said parchments or papers to be drawn as aforesaid.

§ IV. Of the Challenge of Jurors.

And herein,

(1.) *Of the several kinds of challenge.*
[33 Ed. 1. st. 4.—22 H. 8. c. 14.—1 & 2 Ph. & M. c. 10.—24 G. 2. c. 10.]

(2.) *When the challenge is to be taken.*

(3.) *How the challenge shall be tried.*

(4.) *How panels may be reformed by the court without challenge.*
[3 H. 8. c. 12.]

(1.) Of the several kinds of Challenge.

Two kinds of challenge. There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it stands *arrayed* in the *panel*, or little square *pane* of parchment on which the jurors' names are written; or to the *polls*, by which are meant the several particular persons or *heads* in the array. 1 *Inst.* 156. 158.

To the array. Challenge to the *array*, is in respect of the partiality or default of the sheriff, coroner, or other officer that made the return: And this is two-fold;

Principal challenge to the array. (1) Principal challenge to the array; which, if it be made good, is a sufficient cause of exemption, without leaving any thing to the judgment of the triers.

Causes of challenge of this sort, are such as these; if the sheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue (*a*). If any one or more of the jury be returned at the denomination of the party, plaintiff, or defendant, the whole array shall be quashed. If the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So if the plaintiff or defendant have an action of debt against the sheriff; but otherwise it is, if the sheriff have an action of debt against either party. Or if the sheriff have parcel of the

(*a*) See *post.* p. 110.

land depending upon the same title. Or if the sheriff, or his bailiff which returned the jury, be under the distress of either party, or if the sheriff or his bailiff be either of counsel, attorney, officer, or servant of either party; gossip, or arbitrator in the same manner, and treated thereof. 1 *Inst.* 156.

And formerly, if a peer were plaintiff or defendant, and a knight were not returned of the jury, the array might have been quashed: But now by stat. 24 *G.* 2. *c.* 18. § 4. no challenge shall be taken to any panel of jurors for want of a knight's being returned of the panel, where a peer is a party. 24 G.2. c.18.

And the subject may challenge the array against the king; as in traverse of an office, he that traverseth may challenge the array; and so it is in case of life. 1 *Inst.* 156.

And where a subject may challenge the array for unindifferency, there the king being a party may also challenge for the same cause. 1 *Inst.* 156.

The array challenged on both sides shall be quashed. 1 *Inst.* 156.

Challenge to the array for favour.

(2) Challenge to the array for favour. He that taketh this must shew in certain the name of him that made it, and in whose time, and all in certainty. This kind of challenge, being no principal challenge, must be left to the discretion and conscience of the triers. As if the plaintiff or defendant be tenant to the sheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the son of the sheriff and the daughter of the party, and the like, is no principal challenge, but to the favour; but if the sheriff marry the daughter of either party, or the like, this (as hath been said) is a principal challenge. 1 *Inst.* 156.

But where the king is party, one shall not challenge the array for favour; because in respect of his allegiance, he ought to favour the king more. But if the sheriff be a menial servant of the king, there the challenge is good. 1 *Inst.* 156. By which it seems to be meant, that such challenge is not good, without shewing some actual partiality in the sheriff. 2 *Haw.* *c.* 43. § 32.

But the king may challenge the array for favour. 1 *Inst.* 156.

To the polls.

Challenge to the polls is threefold;

Peremptory challenge to the polls.

(1) Peremptory. This is so called, because a person may challenge peremptorily, upon his own dislike, without shewing any cause.

Not allowed to the king. 33 Ed. 1. st. 4.

This peremptory challenge shall not be allowed to the king; for it is provided by stat. 33 *Ed.* 1. *st.* 4. that he who challenges a juror for the king shall shew cause, and the truth thereof shall be enquired of. And this extends as well to criminal as civil causes. However, if the king challenge a juror, he need not shew any cause of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the person challenged. And if the defendant, in order to oblige the king to shew cause, presently challenge all the rest, yet it hath been adjudged that the defendant shall be first put to shew all his cause of challenge, before the king need to shew any. 2 *Haw.* *c.* 43. § 2.

When allowed against the king.

And this peremptory challenge is not allowable to the party against the king, but only in cases of treason or felony, in favour of life. 1 *Inst.* 156.

But in case of treason or felony, the prisoner by the common law might peremptorily challenge thirty-five, which was under the

22 H.8. c.14. number of three juries; but by stat. 22 *H.* 8. *c.* 14. § 6. the number is reduced to twenty, in petit treason, murder, and felony, and in case of high treason, and misprision of high treason, it was taken
33 H.8. c.23. away by stat. 33 *H.* 8. *c.* 23. § 3.; but by the stat. 1 & 2 *P.* & *M.*
1 & 2 P. & M. c.10. *c.* 10. the common law was again revived for *any* treason, and *therein* the prisoner shall have his peremptory challenge to the number of thirty-five.

But as to all murders and other felonies, stat. 22 *H.* 8. *c.* 14. taking away the peremptory challenge of above twenty stands in force. 2 *Hale*, 269. But if the party challenge above that number, he shall not have judgment of death, but his challenge shall be over-ruled, and he shall be put upon his trial. *Hale's Sum.* 259. 2 *Hale*, 270.

A peremptory challenge is not allowed in the trial of collateral issues; *Fost.* 42. 3 *MS. Sum.* 158. Nor in any trial for a misdemeanor, *Reading's Case*, 7 *Howell's St. Tri.* 264. *Titus Oates's Case*, 10 *Howell's St. Tri.* 1079. See also *Christian's Note to* 4 *Blac. Com.* 353.

Principal challenge to the polls. (2) Principal challenge to the polls; where cause is shewn, but which if found true, stands sufficient of itself, without leaving any thing to the triers.

Causes. Causes of principal challenge to the polls are such as these:

Peer sworn. A peer is not to be sworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his discharge. 1 *Inst.* 156. 2 *Haw.* *c.* 43. § 11.

Estate. Want of freehold is a good cause of challenge. 1 *Inst.* 156.

Alienage. Also if a person is an alien. 1 *Inst.* 156.

Age. If the juror be within the age of twenty-one, it is a good cause of challenge. 1 *Inst.* 157.

If a juror be above the age of seventy, or be sick, or be non-resident in the county, he may sue out a writ of privilege for his discharge; but if he be returned and appear, he can neither be challenged by the party, nor excuse himself from not serving, if there be not enough without him. 2 *Haw.* *c.* 43. § 26.

Kindred. If the juror be of blood or kindred to either party, this is a principal challenge; for that the law presumeth that one kinsman doth favour another, before a stranger; and how far remote soever he is of kindred yet the challenge is good. 1 *Inst.* 157.

Affinity. Affinity, or alliance by marriage, is a principal challenge, if the same continue, or issue be had; otherwise it is but to the favour. 1 *Inst.* 157.

Godfathers. If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge in our books. 1 *Inst.* 157.

Interest in title. If a juror hath part of the land that dependeth upon the same title, it is a principal challenge. 1 *Inst.* 157.

Prejudice. It hath been allowed a good cause of challenge, on the part of the prisoner, that the juror hath declared his opinion before-hand, that the party is guilty, or will be hanged, or the like. 2 *Haw.* *c.* 43. § 28.

Prior verdict by the juror. Likewise if a juror gave a verdict before for the same cause or upon the same title or matter, though between other persons. 1 *Inst.* 157.

Indictor. So likewise one may be challenged, that he was indictor of the plaintiff or defendant in the same cause; for such a one it may be

thought, will not falsify his former oath. *Lamb.* 554. And if a grand juryman who was one of the indictors in the same cause be returned upon the petit-jury, and do not challenge himself, he shall be fined. 2 *Hale*, 309.

If a juror hath been an arbitrator, chosen by the plaintiff or defendant in the same cause, and hath been informed thereof or treated of the matter, this is a principal challenge; otherwise, if he were chosen indifferently by either of the parties. 1 *Inst.* 157. Juror having been an arbitrator in the cause.

If he be of counsel, servant, or of fee of either party, it is a principal challenge. 1 *Inst.* 157. Counsel, &c.

Also, if a juryman, before he be sworn, take information of the case, this is a cause of challenge. 2 *Hale*, 306.

If any, after he be returned, do eat and drink at the charge of either party, it is a principal cause of challenge. 1 *Inst.* 157. Eating and drinking at the cost of a party.

But it is not a principal challenge to a juror, but only to the favour, that the prosecutor was lately entertained at his house. 3 *Salk.* 81.

Actions brought by the juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal challenge; other actions, which do not imply malice or displeasure, are but to the favour. 1 *Inst.* 157. Malice.

In a cause where the parson of the parish is party, and the right of the church cometh in debate, a parishioner is a principal challenge. 1 *Inst.* 157. Parishioner.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge: but if either party labour the juror to appear and to do his conscience, this is no challenge at all, but lawful for him to do it. 1 *Inst.* 157. Labouring a juror.

That the juror is a fellow-servant with either party, is no principal challenge but to the favour. 1 *Inst.* 157. Fellow-servant.

If the juror be attainted or convicted of treason or felony, or for any offence to life or member, or in attaint for a false verdict, or for perjury as a witness, or in a conspiracy at the suit of the king, or in any suit, (either for the king or for any subject,) be adjudged to the pillory, tumbril, or the like, or to be branded, or stigmatised, or to have any other corporal punishment, whereby he becometh infamous; these, and the like, are principal causes of challenge. 1 *Inst.* 158. Attainder.

So it is if a man be outlawed in trespass, debt, or any other action, for he is *ex lex*, and therefore not a lawful man. 1 *Inst.* 158. Outlawry.

. And old books have said, that if he be excommunicated, he could not be of jury. 1 *Inst.* 158. Excommunicate.

But it is of no objection that a juror has been sworn by a wrong christian name either in a criminal or a civil case. Wrongly sworn.

An instance of the former kind occurred at *Newcastle* in 1783, where after the business on the crown side was over, it was discovered that *Robert Curry*, who served upon the jury, had answered to the name of *Joseph Curry* in the sheriff's panel, and had been sworn by that name. On further enquiry it appeared that there was a person of the name of *Joseph Curry*, belonging to *Newcastle*, but not at that time resident within the county; that *Robert Curry* was qualified to serve on juries, and had been summoned by the bailiffs to attend on the crown side as a juryman at these assizes. All this was mentioned to Mr. Baron *Eyre*, who, conceiving it only to amount to misnomer in the panel of the juryman intended Where *R. C.* answered to the name of *J. C.* on the sheriff's panel, at the trial of a prisoner for a capital felony, it is mere matter of challenge, and after verdict cannot be taken advantage

of, by the party convicted, as a mis-trial.

to be returned, and who did serve, and that it was but cause of challenge, which, on being stated, would instantly have been rectified by altering the panel, and that after judgment it could not be assigned as error, did not incline to interpose on the ground of a supposed irregularity in the proceedings. However, on being pressed by the counsel, the judge thought fit to respite the execution of a convict for forgery until the *Mich.* term following, that he might have an opportunity of mentioning the case to the rest of the judges. And on the first day of *Mich.* term 1783, the judges were unanimously of opinion that there was no ground for the objection if a writ of error were brought, and much less upon a summary application. *The case of a juryman, MS.* (*D.*) 12 *East*, 231. *S. C.* (*n.*)

The son of a juryman summoned and returned, having answered to his father's name when called on the panel, and served as one of the jury on the trial of a cause, is not of itself a sufficient ground for setting aside the verdict as for a mis-trial.

In a more recent case, *Hill* v. *Yates*, 12 *East*, 229. where it appeared that the son of a juryman returned had answered to his father's name when called on the panel, and served as one of the jury on the trial of the cause, the court of K. B. refused to set aside the verdict as for a mis-trial. In the course of the same term Lord *Ellenborough* C. J. said, he had mentioned this case to all the judges, and they were all of opinion that it was a matter within their discretion to grant or refuse a new trial on such a ground, and that if no injustice had been done, which was not pretended in this instance, they would not interfere in this mode, but leave the party to get rid of the verdict as he might. That if they were to listen to such an objection, they might set aside half the verdicts given at every assizes, where the same thing might happen from accident or inadvertence, and possibly sometimes from design, especially in criminal cases. His lordship cited the above case before Mr. B. *Eyre*, and said he had mentioned this matter again in court, in order to put at rest the question once for all, that applications of this sort might not be made again and again.

But where a person not summoned to serve on a jury at *nisi prius* answered to the name of a person for whom a summons was delivered, and to whose house he had succeeded, the objection having been made before the verdict was taken, the court of C. P. awarded a *venire de novo*. *Davey* v. *Hobson*, *H. T.* 1816. 6 *Taunt.* 460. 2 *Marsh.* 154. See also *Norman* v. *Beaumont*, *Will.* 484. *Wray* v. *Thorn*, *Will.* 488.

Challenge to the polls for favour.

(3) Challenge to the polls for favour. This is when either party cannot take any principal challenge, but sheweth causes of favour, which must be left to the conscience and discretion of the triers, upon hearing their evidence, to find him favourable or not favourable. And the causes of favour are infinite. For all which, the rule of law is, that he must stand indifferent, as he stands unsworn. 1 *Inst.* 157.

(2.) When the Challenge is to be taken.

No challenge can be taken either to the array or to the polls, until a full jury have appeared; and therefore, where the challenges are taken previously, they are irregularly made. *Rex* v. *Edmonds and others*, *E.* 2 *G.* 4. 4 *B.* & *A.* 471.

The disallowing of a challenge is not a ground for a new trial, but for a *venire de novo*; and every challenge must be propounded in such a way as that it may be put at the time upon the N. P.

record, so that the adverse party may either demur, or counterplead, or deny the matter of challenge, in which last case only triers are to be appointed; and, therefore, where the challenges were not put on the record, the defendants were held not to be in a condition to ask the opinion of the court of K. B. as a matter of right upon their sufficiency. *S. C.* **Rex v. Edmonds.**

There can be no challenge to the array on the ground of unindifferency in the master of the crown office, he being the officer of the court expressly appointed to nominate the jury. The only remedy in such a case is to apply to the court by motion to appoint some other officer to nominate the jury. *S. C.*

The master of the crown office, in nominating the jury, selected the names of the jurors, and did not take them by chance from the freeholders' book. He also took those only whose names had the addition of "Esquire," or of some higher degree; and included some persons who were in the commission of the peace; the court of K.B. held that, in so doing, he was perfectly right. He also included in his nomination some persons who, as grand jurymen, had found the indictment, and persisted in his opinion as to their sufficiency, unless the crown would consent to abandon them; which was done, and others were then substituted in their places. The court of K. B. held that he was wrong in his opinion, but that there was no ground for presuming partiality. *S. C.*

The sheriff's officer had neglected to summon one of the 24 special jurymen returned on the panel. The court of K. B. held, that this was no ground of challenge to the array for unindifferency on the part of the sheriff. *S. C.*

It is not competent to ask jurymen (whether special jurymen or talesmen) if they have not, previously to the trial, expressed opinions hostile to the defendants and their cause, in order to found a challenge to the polls on that ground, but such expressions must be proved by extrinsic evidence. *S. C.*

It seems that a grand juror, who found the bill, ought not to be on the special jury. *S. C. Vide Peter Cook's case,* 13 *Howell's St. Tri.* 339.

He that hath divers challenges must take them all at once. 1 *Inst.* 158.

If a juror be challenged by one party, and after be tried indifferent, it is time enough for the other party to challenge him. 1 *Inst.* 158.

After challenge to the array, and trial duly returned, if the same party take a challenge to the polls, he must shew cause presently. *Id.*

If a jury be formerly sworn, if he be challenged, the party must shew cause presently, and that cause must rise since he was sworn. *Id.*

When the king is party, the defendant that challengeth for cause must shew his cause presently. *Id.*

But if a juror be challenged between party and party, and there be enough of the panel besides, the cause of challenge needeth not to be shewed, unless the other side challenge *touts paravail. Tri. per Pais.* 143.

If a man in case of treason or felony, challenge for cause, and he be tried indifferent, yet he may challenge him peremptorily. 1 *Inst.* 158.

The prisoner must take all peremptory challenges himself, even in cases wherein he may have counsel. 2 *Haw. c.* 43. § 4.

The challenge to the array must be in writing (C); but where the challenge is to the polls, it is a short way by a verbal challenge. *Tri. per Pais*, 172.

(3.) How the Challenges shall be tried.

The challenge of him who first challenged shall be first tried. *Tri. per Pais*, 144.

If the array be challenged, it lies in the discretion of the court how it shall be tried; sometimes it is done by two coroners, and sometimes by two of the jury, with this difference, that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge found in favour of partiality, then by any other two assigned thereunto by the court. 2 *Hale*, 275.

When any challenge is made to the polls, if it be before any jurors are sworn, the court shall choose the triers; if two are sworn, they shall try; and if they try one indifferent, and he be sworn, then he and the two triers shall try another; and if another be tried indifferent, and he be sworn, then the two triers cease, and the two that be sworn on the jury shall try the rest: If the plaintiff challenge ten, and the defendant one, and the twelfth is sworn, because one cannot try alone, there shall be added to him one challenged by the plaintiff, and another by the defendant. *Finch*, 112. 1 *Inst.* 158.

The trier's oath is, " *You shall well and truly try, whether* A. B. (the juryman challenged) *stand indifferent between the parties to* " *this issue:* So help you God." 1 *Salk.* 152.

If the cause of challenge touch the dishonour or discredit of the juror, he shall not be examined on his oath; but in other cases he shall be examined on his oath, to inform the triers. 1 *Inst.* 158. 1 *Salk.* 153.

If the array be quashed against the sheriff, the process of *venire facias juratores* shall be directed to the coroners: if against any of the coroners, then process shall be awarded to the rest; if against all of them, then the court shall appoint certain elisors (so named *ab eligendo*), against whose return no challenge shall be taken to the array, because they were appointed by the court, but he may have his challenge to the polls. 1 *Inst.* 158.

The panel of tales having been quashed in a special jury case, on the ground of unindifference in the sheriff: the court of K. B. held, that a *venire facias* was properly awarded to the coroner, although two of the special jurymen appeared and were sworn on the former occasion. *Rex* v. *Dolby*, *T.* 4 *G.* 4. 2 *B.* & *C.* 104.

(4.) How Panels may be reformed by the Court without Challenge.

3 H. 8. c. 12. Besides the challenges which may be taken by the plaintiff or defendant, it is enacted, by stat. 3 *H.* 8. *c.* 12. that, in cases where the king is party, the justices of assize, or of the peace in sessions, may reform the panels of jurors, by putting to, and taking out of the names of the persons impanelled by their discretion; and if the sheriff do not return the panel so reformed,

he shall forfeit 20*l.*, half to the king, and half to him that shall sue.

And this extends both to grand and petit juries. 2 *Hale*, 156.

And hence it is, that if a prisoner be arraigned before the judge that sits upon the crown side, it is usual for the judge to send for a jury to the judge of *nisi prius*, and when the jury is brought, the sheriff returns them between the king and the prisoner; which is by virtue of this statute. 2 *Hale*, 265.

§ V. Of the Demeanor of Jurors in giving their Verdict.

By the law of *England*, a jury after the evidence given upon the issue ought to be kept together in some convenient place, without meat or drink, fire or candle, and without speech with any, unless it be the bailiff, and with him only if they be agreed. 1 *Inst.* 227. Jurors to be kept without meat or drink.

And the bailiff ought to be sworn to keep them together, and not to suffer any to speak with them. 2 *Hale*, 296. Bailiff sworn, to keep them.

If the jury after their evidence given to them at the bar do at their own charges eat or drink, either before or after they be agreed on their verdict, it is fineable, but it shall not avoid the verdict: but if before they be agreed on their verdict they eat or drink at the charge of the plaintiff, if the verdict be given for him, it shall avoid the verdict; but if it be given for the defendant it shall not avoid it; and so on the contrary. But if after they be agreed on their verdict they eat or drink at the charge of him for whom they do pass, it shall not avoid the verdict. 1 *Inst.* 227. Whether eating and drinking shall avoid the verdict.

But with the assent of the justices, they may both eat and drink; as if any of the jurors fall sick before they be agreed of their verdict, then by the assent of the justices he may have meat or drink, and also such other things as be necessary for him and his fellows also, at their own costs, or at the indifferent costs of the parties, if they so agree; And if they cannot agree, the justices may in such case suffer the jury to have both meat and drink for a time, to see whether they will agree. *D. & St.* 158. In what case they may eat or drink.

After their departure they may desire to hear one of the witnesses again, and it shall be granted, so he deliver his testimony in open court; and also they may desire to propound questions to the court for their satisfaction, and it shall be granted, so it be in open court. 2 *Hale*, 296. May re-examine witnesses.

But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in issue, which was not given in evidence, it shall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, and so on the contrary. But if the jury carry away any writing unsealed, which was given in evidence in open court, this shall not avoid their verdict, albeit they should not have carried it with them. 1 *Inst.* 227. May hear no evidence but in court.

Rex v. *Fowler and Sexton*, *H.* 1 & 2 *G.* 4. 4 *B. & A.* 273.— The defendants were indicted at the quarter sessions for the county of *Sussex* for stealing oats, to which indictment they pleaded not guilty, and put themselves upon the country. They Juror at sessions having conversed with a stranger respecting trial

Rex v. Fowler.

On retiring to converse of verdict, a *venire de novo* was awarded for the next sessions, when prisoners were convicted. On writ of error, judgment affirmed.

were found guilty. — It appeared, that on the jury retiring, one of them had separated from the rest of the jurors and conversed with a stranger concerning the trial, upon which the quarter sessions quashed the verdict, and awarded a *venire de novo* to the next sessions, at which the prisoners were convicted and received judgment. On writ of error, two objections were urged; —one, that the sessions could not grant a new trial; the other, that there should have been a new arraignment and plea; *Sed per Curiam.* The first verdict was either good or bad; if it were good, then the second trial was *coram non judice*, and may be considered as a nullity: if, on the other hand, the first verdict were bad, inasmuch as the prisoners had put themselves upon the country, the prisoners might well be tried at the next sessions; and the second trial is not to be considered in the nature of a new trial, but the first trial is to be considered a mis-trial, and therefore a nullity. In either case, the judgment is right. — Judgment affirmed.

The parties having once pleaded and put themselves on the country, it was not necessary for them to plead *de novo*. *S. C.*

Cannot be discharged without giving a verdict.

A jury charged and sworn in a capital case cannot be discharged (without the prisoner's consent) till they have given a verdict. 2 *Haw. c.* 47. § 1. Sir *John Wedderburn's case, Fost.* 22.

And the king cannot be nonsuit, for he is in judgment of law ever present in court. 1 *Inst.* 227.

May be fined for saying they are agreed, when they are not.

If a jury say they are agreed, and it being asked who shall say for them, they say their foreman; but upon further inquiry they are not agreed, they may be fined. 2 *Hale*, 309.

If a jury cast lots for their verdict it shall be set aside, and they shall be fined for the contempt. 3 *Keb.* 805. 2 *Lev.* 140, 205.

Casting lots for their verdict.

Hale v. *Cove*, 1 *Str.* 642. The jury having sat up all night, agreed in the morning to put two papers into a hat, marked *Plaintiff* and *Defendant*, and so draw lots; *Plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict must be set aside; but the question was, whether the defendant should pay costs? The Court inclined to give the plaintiff costs, comparing it to the case of a verdict against evidence; but at last it was agreed that the costs should wait the event of a new trial.

But in *Vasie* v. *Delaval*, 1 *T. R.* 11. it was determined, upon a motion for a rule to set aside a verdict where the jury had tossed up for their verdict, that the affidavit of none of the jurymen themselves could be admitted in evidence, in all of whom such conduct is a very high misdemeanour, but in every such case the court must derive their knowledge from some other source, such as from some person having seen the transaction through a window, or by some other means.

So also the court of C. P., after consultation with the other judges, rejected an application to set aside a verdict on the affidavit of a juryman, that it was decided by lot. *Owen* v. *Warburton*, 1 *N. R.* 326.

Giving verdict without evidence.

The jury may give a verdict without testimony, when they themselves have a conusance of the fact. *Tri. per Pais*, 279. 1 *Vent.* 67.

But if they give a verdict on their own knowledge, they ought to tell the court so; but they may be sworn as witnesses, and the fair way is to tell the court before they are sworn, that they have evidence to give. 1 *Salk.* 405. **Juror may be witness.**

For certainly it is of dangerous consequence to receive a verdict against evidence given, on supposal that some of the jury knew otherwise, or on private information given by any juryman to the rest, where he cannot be cross-examined. *Tri. per Pais*, 209.

The late Mr. Justice *Buller*, in a conversation concerning a case which had been tried before him (*Smith* v. *Hollings*, *Stafford Spring Assizes*, 1794,) said to Mr. *Howell* (editor of the State Trials), that where a juryman had knowledge of any matter of evidence in a cause which he is trying, he ought not to impart the same privily to the rest of the jury, but should state to the court that he had such knowledge, and thereupon be examined, and subjected to cross-examination as a witness. 6 *Howell's St. Tri.* 1012. (n.)

After they have agreed, they may, in causes between party and party, if the court be risen, give a private verdict before any of the judges of the court, and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict, and that which is given in court shall stand. 1 *Inst.* 227. **Private verdict.**

But in criminal cases of life or member, the jury can give no private verdict, but they must give it openly in court. 1 *Inst.* 227.

In all causes, and in all actions, the jury may give either a general or a special verdict, as well in causes criminal as civil; and the court ought to receive a special verdict, if pertinent to the point in issue. 3 *Salk.* 373. **Special verdict.**

Thus, if one be indicted for grand larceny, that is, for stealing goods above the value of 12*d.*, yet the jury may find specially that he is guilty, but that the goods are not above the value of 12*d.*; in which case he shall only have judgment of petty larceny. 1 *Haw. c.* 47. § 6.

Jurors are to try the fact, and the judges ought to judge according to the law that ariseth upon the fact. 1 *Inst.* 226. (*a*) **Jurors to try not the law, but the fact.**

But if they will take upon them the knowledge of the law upon the matter they may; yet it is dangerous, for if they mistake the law, they run into the danger of an attaint; therefore to find the special matter is the safest way, where the case is doubtful. 1 *Inst.* 228.

But if the jury find according to the direction of the judge in matter of law, although the judge be mistaken, yet the jury shall not be liable to attaint. 1 *Ld. Raym.* 470.

By stat. 32 *G.* 3. *c.* 60. § 1. After reciting that doubts had arisen, whether on the trial of an indictment or information for the making or publishing any libel (*b*) it was competent to the jury to give their verdict upon the whole matter in issue, it is declared that on every such trial, the jury may give a general verdict of guilty or not guilty upon the whole matter in issue; and shall not be required or directed by the court or judge to find the defendant **32 G. 3. c. 60. Jury may give a general verdict upon question of libel.**

(*a*) *Ad quæstionem juris non respondent Juratores. Fost.* 256.
(*b*) See tit. Libel, *post.*

32 G. 3. c. 60. guilty, merely on the proof of the publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information.

Court to give their opinion. § 2. Provided, that on every such trial the court or judge shall, according to their discretion, give their opinion and directions to the jury on the matter in issue, in like manner as in other criminal cases.

Jury may find a special verdict. § 3. Provided also, that nothing herein shall extend to prevent the jury from finding a special verdict in their discretion, as in other criminal cases.

Defendant may move in arrest of judgment. § 4. And in case the jury find the defendant guilty, he may move in arrest of judgment, in like manner as before the passing of this act.

Finding against evidence. It hath been adjudged, that if the jury acquit a prisoner of an indictment of felony against manifest evidence, the court may, before the verdict is recorded, but not after, order them to go out again, and re-consider the matter; but this by many is thought hard, and seems not of late years to have been so frequently practised as formerly. However, it is settled, that the court cannot set aside a verdict which acquits a defendant of a prosecution properly criminal, as it seems that they may a verdict that convicts him for having been given contrary to evidence and the directions of the judge, or any verdict whatsoever for a mis-trial. 2 *Haw. c.* 47. § 11.

Varying from the verdict. After the verdict recorded, the jury cannot vary from it; but before it is recorded, they may vary from the first offer of their verdict, and that verdict which is recorded shall stand. 1 *Inst.* 227.

Verdict finding an impossibility. A verdict finding a matter to have been done *contra formam statuti*, whereas it could not be *contra formam statuti*, shall not be void, if at the same time it find the substance of the indictment; but the surplus shall be rejected. 1 *Haw. c.* 30. § 9.

Verdict how far to be taken strictly. Verdict shall not be taken so strictly as pleadings; but the substance of the thing in issue ought to be always found. 3 *Salk.* 373.

Where they cannot agree. It is said, that if the jurors agree not before the departure of the justices of gaol delivery into another county, the sheriff must send them along in carts, and the judge may take and record their verdict in a foreign county. 2 *Hale*, 297. *Tri. per Pais*, 274. 285.

But if the case so happen, that the jury can in no wise agree, as if one of the jurors knoweth in his own conscience the thing to be false, which the other jurors affirm to be true, and so he will not agree with them in giving a false verdict, and this appeareth to the justices by examination; the justices (as it seemeth) in such case may take such order in the matter as shall seem to them by their discretion to stand with reason and conscience, by awarding a new inquest, or otherwise, as they shall think best by their discretion, like as they may do if one of the jury die before the verdict. *Dr. & St.* 158.

Juror taken ill. *Rex* v. *Gould, M. T.* 4 *G.* 3. The defendant was indicted for murder. The jury were sworn, and part of the evidence given, but before the trial was over one of the jurymen was taken ill, went out of the court with the judge's leave, and presently after died. The judge, doubting whether he could swear another jury,

discharged the eleven, and left the prisoner in gaol. The court was moved for a writ of *habeas corpus* to bring up the prisoner that he might be discharged, having been once put upon his trial. This being a new case, the court said they would advise with the other judges upon it; and afterwards they all agreed that the prisoner might be tried at the next assizes, or the judge might have ordered a new jury to have been sworn immediately. The prisoner was tried accordingly at the next assizes and acquitted in evidence. *Dorchester Sum. Ass.* 1763.

In the case of *Jones* alias *Horner*, during the examination of the third witness, a juryman was seized with a fit, which proceeded from intoxication; the judge discharged the jury of the prisoner and fined the juryman 20*l.* The prisoner was arraigned a second time upon the same indictment, tried and convicted. It was objected that he could not be arraigned a second time; the judges (at Serjeant's Inn, 27 *G.* 3.) were of opinion, that the conviction was proper, and at the next assizes at *Durham* (Summer, 1788.) Mr. J. *Grose* passed sentence on the prisoner. 3 *MS. Sum.* 362.

If a juror be taken ill during the trial of a prisoner for felony, the jury may be discharged, and the remaining eleven, together with a new juror, re-sworn to try the prisoner.

A. S. was tried at the summer assizes at *York* before *Lawrence* J., for murder. During the trial, one of the jury was seized with a fit, and was carried out of the court in an insensible state. The judge waited some time, in hope that the juror might recover; but at length one of the jury, who came from the same neighbourhood, requested permission of the court to go to the public house to which the sick man had been taken, to enquire into his situation, and he was suffered to go accompanied by a bailiff, who was sworn to attend him. Upon his return, he was sworn, " true answer to make to such questions as should be demanded of him;" and he then deposed from what he had seen of his fellow juror, and from what he knew of the state of his health, he did not think he would be able to attend that trial immediately. Upon which Mr. J. *Lawrence*, after referring to the above case of *Jones* alias *Horner*, which he read from a MS. of Mr. J. *Buller*'s, discharged the jury, and ordered another jury to be sworn, and the remaining *eleven* jurors served upon the *second* panel. The prisoner was convicted and executed. *Ann Scalbert's case*, 2 *Leach*, 620.

It is now the settled law of the country, that if during the trial of a prisoner one of the jurymen be taken ill, that jury may be discharged and the prisoner tried by *another* jury.

R. v. *Edwards*, *Monmouth Lent Ass.* 1812. *MS. C. C. R.* 3 *Campb.* 207. The prisoner was indicted for maliciously shooting at one *Lewis Roberts*. When the evidence for the crown had been nearly gone through, one of the jurymen fell down in a fit, and was carried out of court in a state of insensibility; after waiting some time, a surgeon who had attended him was sworn, and stated to the court that he had been attacked by an epileptic fit, that he was put to bed, that he remained insensible, and that there was no chance of his being able to return to do duty as a juryman that day.—*Wood* B. then said, that under these circumstances he was of opinion the jury should be discharged, another jury should be sworn and charged with the prisoner, and the trial begin *de novo*. *Clifford* for the prisoner objected to this course of proceeding. He contended that in capital cases *after evidence had been gone through*, the jury cannot be discharged, and that if from any circumstance happening during the trial it becomes impossible for

the jury to find a verdict of guilty, this is a sort of *God-send* for the benefit of the prisoner. *Wood* B. over-ruled the objection, but said he would reserve the point for the opinion of the judges, if the prisoner were found *guilty*. The eleven jurymen were then discharged from giving any verdict, their names were again called over, and a twelfth was put into the box. The prisoner was asked by the judge, as each juryman came to the book to be sworn, if he had any cause of *challenge* to him (*a*); they were all sworn without challenge; the officer charged them with the prisoner in the common form; the witnesses for the crown were sworn anew, and by consent, the evidence they had before given was read from the judge's notes, and they were asked whether it was true. — The prisoner was convicted. In *Easter Term* following the point was argued in the Exchequer Chamber, before eleven of the twelve judges. *Clifford* for the prisoner insisted that he was not properly tried by the *second* jury, when a former jury had been charged to try him, relying chiefly upon the authorities collected in *Kinlock's Case* (*Fost.* 16. 18. *Howell's St. Tri.* 395.); but the judges, without hearing the other side, were unanimously of opinion that the conviction was right, and they mentioned a case before Mr. Baron *Adams*, on the *Western Circuit*, and another before Lord *Ellenborough* at *York*, where, under similar circumstances, the like course had been pursued.

§ VI. Of the Indemnity and Punishment of Jurors.

Threatening a juror.

If a man assault and threaten a juror for giving a verdict against him, he is highly punishable by fine and imprisonment; and if he strike him in the court, in the presence of the judge of assize, he shall lose his hand and his goods, and profit of his lands during life, and suffer perpetual imprisonment. 1 *Haw.* c. 21. § 3.

35 H. 8. c. 6. Fines.

And by stat 35 *H.* 8 *c.* 6. § 9. If the talesmen after they be called, be present, and do not appear, or after appearance do wilfully withdraw themselves, the judges may fine them; which shall be levied as issues forfeited by jurors, for default of their appearance at common law, have been accustomed to be levied.

Jurors not appearing.

By the common law, jurors returned, and not appearing, shall lose and forfeit the issues returned upon them. *Vide* stat. 35 *H.* 8. *c.* 6. § 9.

Present, and refusing to appear, or withdrawing.

And if a juryman be called, and (being present) refuse to appear, or having appeared, withdraw himself before he be sworn, the court may set a fine upon him at their discretion. 2 *Hale,* 309. *Vide* stat 35 *H* 8. *c.* 6.

29 G. 2. c. 19. In London, towns corporate, liberties, and franchises.

And by stat. 29 *G.* 2. *c.* 19. § 1. 2. 3. A juror duly impanelled and summoned not appearing, and serving in any court of record within the city of *London*, or in any other city or town corporate, liberty, or franchise, after being openly called three times, and oath made of his having been duly summoned, shall (without reasonable excuse on oath or affidavit to the satisfaction of the court) be fined not more than 40*s.* nor less than 20*s.* and on refusal to pay to such person whom the judge or judges who shall have

(*a*) The prisoner had a right to challenge the eleven, as well as the twelfth, *MS. C. C. R.* 4 *Taunt.* 309.

set such fine shall appoint to receive the same, they shall levy the same by warrant of distress and sale, rendering the overplus, the reasonable charges of distress and sale being first deducted; the same to be paid to the proper officer of the place, to be applied to such uses as issues set on jurors, or other fines set in such courts are by charter, usage, or prescription applicable.

Jury not appearing. Where more than one of the persons returned on a jury do appear, but not a sufficient number to take an inquest, and some of the others come within view of the court, or into the same town in which the court is holden, but refuse to come into the court to be sworn, upon proof of such matter, the court may at the prayer of the party, order the jurors who appeared to enquire what is the yearly value of such defaulters' lands, and after such enquiry made, either summon them to appear, on pain of forfeiting such sum as their lands have been found to be worth by the year, or some lesser sum, or impose a fine of the like sum upon them, without any farther proceeding. But it seems that such juror shall be liable to lose his issues only for such default, and not the yearly value of his lands, unless the party pray it. But a juror who hath actually appeared, and after makes default, is said to be subject to such forfeiture of the yearly value of his lands, whether the party pray it or not, because his contempt appears to the court by its own record: yet even in this case the court in discretion will sometimes only impose a small fine. Also it seems that a juror who makes default, without ever coming into the town wherein the court is holden, is liable only to lose his issues, or to be amerced, but not to be fined. 2 *Haw.* *c.* 22. § 14.

3 G. 2. c. 25. And by stat. 3 *G.* 2. *c.* 25. § 13. In cases of *nisi prius*, every person whose name shall be drawn, and who shall not appear, after being openly called three times, shall, on oath made of his having been lawfully summoned, forfeit not exceeding 5*l.* nor less than 40*s.* for every default; unless some reasonable cause of absence be proved, by oath or affidavit, to the satisfaction of the judge.

Where a grand jury may be fined for not finding a bill. If the grand jury at the assizes or sessions will not find a bill, the court may impanel another inquest (by stat. 3 *H.* 7. *c.* 1.) to enquire of their concealments, and thereupon set fines upon them; but it seemeth that fines set upon grand inquests in any other manner are not warrantable by law; for the privilege of an *Englishman* is, that his life shall not be drawn in danger without due presentment or indictment; and this would be but a slender screen of safeguard, if every justice of the peace, or judge of assize, may make the grand jury present what he pleases, or otherwise fine them. 2 *Hale*, 160, 161.

The grand jury cannot find a bill true for part and false for part; as a petit jury may. 2 *Haw.* *c.* 25. § 2.

But this doctrine relates only to cases where the grand jury take upon themselves to find part of the same indictment to be true and part false; in which case it is holden that the whole is void; and the reason seems to be because the jury do not affirm the fact submitted to their inquiry.

But where there are two distinct counts, as in this case, the finding *billa vera*, as to one count only, and rejecting the other, leaves the indictment as to the counts which the jury affirm just as

if there had been only that one count. *R.* v. *Fieldhouse*, 1 *Cowp.* 328.

Juror taking a bribe.

By stats. 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. *c.* 8. 38 *Ed.* 3. *st.* 1. *c.* 12. If any juror do take of either party to give his verdict, he shall, on conviction by bill or plaint, before the court where the verdict shall pass, forfeit ten times as much as he has taken, half to the king, and half to him that shall sue.

Whether a juror may be prosecuted for a verdict in a criminal matter.

It seems to be certain that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a *criminal* matter, either upon a grand or petit jury; for since the safety of the innocent and punishment of the guilty doth so much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence that they should be as little as possible under the influence of any passion whatsoever; and therefore, lest they should be biassed with the fear of being harassed by a vexatious suit, for acting according to their consciences, the law will not leave any possibility for a prosecution of this kind. And as to the objection that an attaint lies against a jury for a false verdict in a civil cause, and that there is as much reason to allow of it in a criminal one, it may be answered, that in an attaint in a civil cause a man's property is only brought into question a second time, and not his liberty or life. 1 *Haw.* *c.* 72. § 5. 1 *Ld. Raym.* 469.

Attaint in a civil case.

But where the jurors give a false verdict upon an issue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attaint in the king's bench or common pleas, upon which twenty-four of the best men of the county are to be jurors, who are to hear the same evidence which was given to the petit jury, and as much as can be brought in affirmance of the verdict, but no other against it. And if these twenty-four, who are called the grand jury, find it a false verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party shall be infamous, so as never to be received to be a witness, or a juror; shall forfeit his goods and chattels; and his lands and tenements shall be taken into the king's hands; his wife and children cast out of doors; his houses prostrated; his trees rooted up; his meadows ploughed up; and his body imprisoned. And seeing all trials of real, personal, and mixt actions depend upon the oath of twelve men, prudent antiquity inflicted a strange and severe punishment upon them, if they were attainted of perjury. 2 *Inst.* 294.

But now by the statute of 23 *H.* 8. *c.* 3. the severity of this punishment is moderated, if the writ of attaint be grounded upon that statute; but nevertheless, the party grieved may at his election either bring his writ of attaint upon that statute, or at the common law. *Tri. per Pais*, 222.

But this proceeding seems to be entirely disused at this day; and in the place of attaint, motions are now usually made for new trials, when a verdict is against evidence; or the jury misbehaves. *Wood's Inst.* *b.* 4. *c.* 4. 3 *Bla. Com.* 389.

But there can be no new trial for or against the king. *Tri. per Pais*, 210.

Whether they may be fined for their verdict.

It seems to be the current opinion of the old books, that jurors are not subject to any prosecution for false verdict, except by way of attaint: And there seem to be very few ancient precedents for

the punishment either of a grand or petit jury, merely for giving a verdict against evidence, or the direction of the court, either in a capital or civil matter. 2 *Haw.* c. 22. § 20.

The fining and imprisoning of jurors for giving their verdict hath several times been declared in parliament an illegal and arbitrary innovation, and of dangerous consequence to the government, and the lives and liberties of the subject. 2 *Keb.* 180.

In the year 1670, *Penn* and *Mead*, two Quakers, being indicted for *seditiously* preaching to a multitude *tumultuously* assembled in Gracechurch-street, were tried before the Recorder of *London*, who told the jury that they had nothing to do but to find whether the defendants had preached or not; for that, whether the matter or the intention of their preaching were seditious, were questions of law and not of fact, which they were to keep to at their peril. The jury, after some debate, found Penn guilty of speaking to people in Gracechurch-street; and on the Recorder's telling them that they meant, no doubt, that he was speaking to a tumult of people there, he was informed by the foreman, that they allowed of no such words in their finding, but adhered to their former verdict. The Recorder refused to receive it, and desired them to withdraw, on which they again retired, and brought in a general verdict of acquittal; which the Court considering as a contempt, set a fine of forty marks upon each of them, and condemned them to lie in prison till it was paid. EDWARD BUSHEL, one of the jurors, (to whom we are almost as much indebted as to Mr. *Hampden*, who brought the case of ship-money before the Court of Exchequer,) refused to pay his fine, and being imprisoned in consequence of the refusal, sued out his writ of *habeas corpus*, which with the cause of his commitment, (*viz. his refusing to find according to the direction of the Court in matter of law,*) was returned by the sheriffs of *London* to the Court of Common Pleas; when Lord C. J. *Vaughan*, to his immortal honour, delivered his opinion as follows: — "We must take off this veil and "colour of words, which make a shew of being something, but "are, in fact, nothing. If the meaning of these words, *finding* "*against the direction of the Court in matter of law*, be, that if the "judge, having heard the evidence given in court, (for he knows "no other,) shall tell the jury upon this evidence, that the law "is for the Crown, and they, under the pain of fine and impri-"sonment, are to find accordingly; every man sees that the jury "is but a troublesome delay, great charge, and of no use in de-"termining right and wrong; and, therefore, the trials by them "may be better abolished than continued: which were a strange "and new found conclusion, after a trial so celebrated for many "hundreds of years in this country."—He then applied this sound doctrine with double force to criminal cases, and discharged the upright juror from his illegal commitment. *Vaugh.* 135. 6 *Howell's St. Tr.* 999. *See Ld. Erskine's speech on the trial of the Dean of St. Asaph*, 21 *Howell's St. Tr.* 925. 1 *Ld. Erskine's Speeches*, p. 202.

Bushel's case, 22 C. 2.

And to say the truth, says Ld. *Hale*, it would be the most unhappy case that could be to the judge, if he at his peril must take upon him the guilt or innocence of the prisoner; and if the judge's opinion must rule the matter of fact, the trial by jury would be useless. 2 *Hale*, 315.

But what if a jury give a verdict against all reason, convicting or acquitting a person indicted of felony, what shall be done? If the jury *convict* a man against or without evidence, and against the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury acquit him, in like manner the court may send them back again (and so in the former case) to consider better of it, before they record the verdict; but if they are peremptory in it, and stand to their verdict, the court must take their verdict and record it. 2 *Hale*, 309, 310.

A. A. Warrant for returning Lists of Jurors.

Westmorland. { To *Henry Holme*, gentleman, high constable of of the West Ward within the county aforesaid.

AT the general quarter sessions of the peace of our sovereign lord the king, holden at ———— in and for the said county, the ——— day of July, *in the* ———— *year of the reign of our said sovereign lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, before us* ———— *esquires, and others our associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed.*

These are to require you, upon sight hereof, to issue forth your precepts to all the petty constables within your said ward, thereby directing and requiring them to make and return true lists of jurors, according to the form or to the effect here following: that is to say,

Westmorland, West Ward, } To the Constable of ——— .

BY virtue of a warrant from his majesty's justices of the peace in and for the said county, at their general quarter sessions assembled, unto me directed, you are hereby required to make a true list in writing, containing the names and places of abode, together with the titles and additions, of all persons between the ages of twenty-one and seventy, dwelling within your constablewick qualified to serve upon juries, that is to say, of every such person who hath in his own name or in trust for him within the county aforesaid 10*l. a year above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, in all or any of them, in fee simple, fee tail, or for the life of himself, or some other person; or having land in possession in his own right of* 20*l. a year above the reserved rent, being held by lease for five hundred years or more, or for ninety-nine years, or any other term determinable on one or more lives: in order to the making of which list, you may, if you think it needful, apply to any parish officer, who shall have in his custody any of the rates for the poor or land-tax, and from thence take the names of such persons so qualified. Which list so being made as aforesaid, you are required upon two or more* Sundays, *at least twenty days before* Michaelmas *next, to fix on the door of the church or chapel, and of every other public place of religious worship within your parish or other pre-*

cinct, and leave at the same time a duplicate thereof with a church-warden or overseer of the poor, to be perused by the parishioners gratis. *And the said list you are also further required to deliver in at the next general quarter sessions of the peace, to be holden in and for the said county, in open court; or otherwise you may, in the mean time, apply to one of his majesty's justices of the peace in and for the said county, and in his presence subscribe the said list, and attest the truth thereof upon oath; and the same (being first also signed by the said justice) you may deliver to me, to be by me delivered in at the said next general quarter sessions. Given under my hand at* Barnskew *in the said county, the* ——— *day of* ——— *in the* ——— *year* ———.

Henry Holme, *High Constable.*

And this you the said high constable are in no wise to omit, upon the peril that shall ensue thereof. Given under our hands and seals the day and year first above written.

B. The form of a writ to the sheriff to summon jurors for the trial of an issue joined; by the 4 & 5 *W. c.* 24. § 15. **B.**

GEORGE the fourth, &c. to the sheriff of ——— *greeting. We command you that you do not omit by reason of any liberty within your county, but that you enter therein, and cause to come before* ——— *twelve good and lawful men of the vicinage of* ——— *whereof every one hath such lands, tenements, or rents, as will qualify them to serve upon juries, and who are neither of affinity to* ——— *(the plaintiff) nor to* ——— *(the defendant); to hear and do those things which on our behalf shall be then and there enjoined them: And have you then there this precept. Witness* A. B. *and* C. D. *at* ——— *the* ——— *day of* ———.

Note: The general precept for summoning jurors to the sessions is contained in the precept for summoning the sessions, in the title Sessions.

C. Challenge to the array, because the sheriff is of kindred to one of the parties; from *Coke*'s Entries. **C.**

AND now at this day, to wit ——— *came the aforesaid* A. *the plaintiff and* B. *the defendant, by their attornies, and the jurors were impanelled, and demanded and came, and thereupon the aforesaid* B. *challengeth the array of the panel aforesaid, because he said that the panel was arrayed by one* John Zouch, *knight, now and at the time of making the array aforesaid sheriff of the said county of* Derby, *which said sheriff is a kinsman of the aforesaid* John Maners *(the plaintiff); to wit, the son of* George Zouch, *esquire, son of* John Zouch, *knight, son of* John Zouch, *esquire, son of* William *lord* Zouch, *son of* Alan *lord* Zouch, *son of* William *lord* Zouch, *son of* Elizabeth, *daughter of* William *lord* Roos, *father of* William *lord* Roos, *father of* Thomas *lord* Roos, *father of* Eleanor *mother of* George Manners, *knight, father of* Thomas *earl of* Rutland, *father of the aforesaid* John Manners. *And this he is ready to verify, whereupon he prayeth judgment, and that the said panel may be quashed. Which said challenge by* ——— *and by* ——— *triers, to this chosen and sworn, is found true. And therefore let the panel aforesaid be quashed and removed*; &c. Tri. per Pais, 160.

Challenge because the panel was returned at the instance of the party.

And upon this the said ——— challenges the array of the said panel, because he says that the panel was arrayed by one J. S. esquire, late sheriff of the county of ——— aforesaid, at the nomination of the said ——— and in his favour; which said challenge, by triers thereof sworn, is found true.

For other forms of challenges, and proceedings thereupon, see *Tri. p. Pais*, 159—184.

Corrupting or influencing Jurymen. See *Embracery*, under title **Maintenance.**

Justifiable Homicide. See **Homicide.**

Justices of the Peace.

Justices of the peace are judges of record. JUSTICES of the peace are judges of record, appointed by the king to be justices within certain limits, for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge. *Dalt. c.* 2.

His record shall not be gainsaid. And a record or memorial made by a justice of the peace of things done before him judicially in the execution of his office shall be of such credit, that it shall not be gainsaid. One man may affirm a thing, and another man deny it; but if a *record* once say the word, no man shall be received to aver or speak against it; for if men should be admitted to deny the same, there would never be any end of controversies. And, therefore, to avoid all contention, while one saith one thing, and another saith another thing, the law reposeth itself wholly and solely in the report of the judge. **Cannot make a deputy.** And hereof it cometh, that he cannot make a substitute or deputy in his office, seeing that he may not put over the confidence that is put in him. Great cause, therefore, have the justices to take heed that they abuse not this credit; either to the oppression of the subject by making an untrue record, or the defrauding of the king by suppressing the record that is true and lawful. *Lamb.* 63—66.

His certificate not traversable. Hereof also it cometh that if a justice of the peace certify to the K. B. that any person hath broken the peace in his presence, upon this certificate such person shall be there fined, without allowing him any traverse thereto. *Dalt. c.* 70.

And that I may treat intelligibly concerning this office (of which Ld. *Coke* says, 4 *Inst.* 170., the whole christian world hath not the like, if it be duly executed,) I will set forth.

§ I. *The Office of Conservators of the Peace at the Common Law, before the Institution of Justices of the Peace.*

II. *The Commission of the Justices of the Peace founded on the Statute Law.*

[1 Ed. 3. c 16. — 4 Ed. 3. c. 2. — 18 Ed. 3. st. 2. c. 2. — 34 Ed. 3. c. 1. — c. 5. — 13 R. 2. c. 7. — 2 H. 5. st. 2. c. 1. — 11 H. 6. c. 6. — 27 H. 8. c. 24. — 37 H. 8. c. 1. — 1 Ed. 6. c. 7. — 2 & 3 Ed. 6. c. 15. — 1 M. sess. 2. c. 8. — 1 & 2 P. & M. c. 13. — 1 An. st. 1. c. 8. — 6 G. 1. c. 19. — 9 G. 1. c. 7. — 5 G. 2. c. 18. — 18 G. 2. c. 20. — 24 G. 2. c. 55. — 26 G. 2. c. 27. — 1 G. 3. c. 13. — 7 G. 3. c. 9. — c. 21. — 28 G. 3. c. 49. — 33 G. 3. c. 55. — 1 & 2 G. 4. c. 63. — 4 G. 4. c. 27.]

III. *Oaths to be taken by Justices of the Peace.*

[13 R. 2. c. 7. — 25 C. 2. c. 2. — 1 G. 1. st. 2. c. 13. — 2 G. 2. c. 3. — 9 G. 2. c. 26. — 18 G. 2. c. 20 — 1 G. 3. c. 13. — 7 G. 3. c. 9.]

IV. *Fees to be taken by Justices of the Peace.*

[26 G. 2. c. 14. — 27 G. 2. c. 16.]

V. *Some general Directions relating to Justices of the Peace, not falling under any particular title of this Book.*

[16 G. 2. c. 18. — 3 G. 4. c. 126. — 4 G. 4. c. 95.]

VI. *Their Indemnity and Protection by the Law in the right Execution of their Office; and their Punishment for the Omission of it.*

[7 J. c. 5. — 21 J. c. 12. — 24 G. 2. c. 44. — 43 G. 3. c. 141.]

§ I. The Office of Conservators of the Peace at the Common Law, before the Institution of Justices of the Peace.

BEFORE the institution of justices of the peace, there were conservators of the peace in every county, whose office (according to their names) was to conserve the king's peace, and to protect the obedient and innocent subjects from force and violence. These conservators, by the ancient common law, were by force of the king's writ chosen by the freeholders in the county court out of the principal men of the county; after which election so made, and returned, the king directed a writ to the party so elected, to take upon him and execute the office until the king should order otherwise. And thus the coroners still continue to be chosen in full county; As also the knights of the shire for the parliament. 2 *Inst.* 558, 559.

Conservators by election.

Besides these conservators of the peace properly so called, there were and are other conservators of the peace by virtue of certain offices; as for instance,

Conservators by office, viz.

(1) The lord chancellor, and every justice of the king's bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award process for

Lord chancellor and justices of K. B.

the surety of the peace, and to take recognisance for it. 2 *Haw.* c. 8. § 2.

Every court of record. (2) Also, every court of record, as such, hath power to keep the peace within its own precinct. 2 *Haw.* c. 8. § 3.

Justices of peace. (3) Also, every justice of the peace is a conservator of the peace. *Crom.* 6.

Sheriffs. (4) Also, every sheriff is a principal conservator of the peace, and may without doubt *ex officio* award process of the peace, and take surety for it. And it seems the better opinion, that the security so taken by him is by the common law looked on as a recognizance, or matter of record, and not as a common obligation. 2 *Haw.* c. 8. § 4.

Coroners. (5) Also, every coroner is another principal conservator of the peace, and may certainly bind any person to the peace, who makes an affray in his presence. But it seems the better opinion, that he has no authority to grant process for the peace; and it seems clear that the security taken by him for the keeping of the peace (except only where it is taken by him as judge of his own court for an affray done in such court) is not to be looked on as a recognizance, but as an obligation. 2 *Haw.* c. 8. § 5.

Constables. (6) Also, every high and petit constable are by the common law conservators of the peace. 2 *Haw.* c. 8. § 6.

And it is said, that if a constable see persons engaged in an affray, or upon the very point of entering upon it, as where one shall threaten to kill, wound, or beat another, he may imprison the offender of his own authority for a reasonable time till the heat shall be over, and also afterwards detain him till he find surety of the peace by obligation. 1 *Haw.* c. 63. § 14.

But it is said that a constable hath no power to arrest a man for an affray done out of his own view; for it is the proper business of a constable to preserve the peace, not to punish the breach of it; nor doth it follow from his having power to compel those to find sureties who break the peace in his presence, that he hath the same power over those who break it in his absence. 2 *Haw.* c. 8. § 17. *Et vide* Vol. I. *tit.* Constable, § IV.

Conservators by tenure. There were also other conservators of the peace by tenure; who held lands of the king by this service, among others, of being conservators of the peace within such a district. 2 *Haw.* c. 8. § 7.

Conservators by prescription. Also there were other conservators of the peace by prescription; who claimed such power from an immemorial usage in themselves and their predecessors or ancestors, or those whose estate they had in certain lands, which wholly depended upon such usage, both as to its extent, and the manner in which it was to be exercised. 2 *Haw.* c. 8. § 9.

Mayors. Thus it is said, that a mayor of a corporation may be a conservator of the peace by prescription. *Crom.* 6.

It is questioned, indeed, by some, whether any such power can be claimed by usage; yet if the power of holding pleas and even of courts of record, which are of so high a nature, and imply a power of keeping the peace within their own precincts, may be claimed by usage, as it seems to be certain that they may, it seemeth that the bare authority of keeping the peace in a certain district may as well be claimed by such usage. 2 *Haw.* c. 8. § 10.

The authority which such conservators of the peace, whether by election or tenure, or prescription, have at common law, is the same authority which constables of a vill or wapentake have at this day. *Id.* § 11. *Crom.* 6. Powers of conservators.

The general duty of the conservators of the peace by the common law is to employ their own and to command the help of others, to arrest and pacify all such who in their presence and within their jurisdiction and limits, by word or deed, shall go about to break the peace. *Dalt. c.* 1. Their duty.

If a conservator of the peace, being required to see the peace kept, shall be negl'gent therein, he may be indicted and fined. *Id.*

And if the conservators of the peace have committed or bound over any offenders, they are then to send to or be present at the next sessions of the peace, or gaol delivery, there to object against them. *Id.*

§ II. Of the Commission of Justices of the Peace.

Justices of the peace at this day are of three sorts; First, By act of parliament; as the bishop of *Ely*, and his successors, and the archbishop of *York*, and bishop of *Durham*, by stat. 27 *H.* 8. *c.* 24. § 20. 21. 22. Secondly, By charter, or grant made by the king under the great seal; as mayors and the chief officers in divers corporatetowns. Thirdly, By commission. 27 H. 8. c. 24.

At the first, by stat. 1 *Ed.* 3., which is the first statute that ordains the assignment of justices of the peace by the king's commission, those justices had no other power but only to keep the peace. But the very next year the form of the commission was enlarged, and continued still further to be enlarged, both in that king's reign and in the reign of almost every other succeeding prince, until the 30th year of the reign of queen *Elizabeth*, when by the number of the statutes particularly given in charge therein to the justices, many of which nevertheless had been a good while before repealed, and by much vain repetition, and other corruptions that had crept into it, partly by the miswriting of clerks, and partly by the untoward huddling of things together, it was become so cumbersome and foully blemished, that of necessity it ought to be redressed. Which imperfections being made known to Sir *Chr. Wrey*, then L. Ch. J. of the king's bench, he communicated the same with the other judges and barons, so as by a general conference had amongst them the commission was carefully refined in the *Mich.* term 1590, and being then also presented to the lord chancellor, he accepted thereof, and commanded the same to be used; which continues with very little alteration to this day. *Lamb. c.* 9. 1 Ed. 3. Assignment of justices by commission.

Which is as follows:

George *the fourth by the grace of* God *of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, To* A. B., C. D., &c. *greeting.* Form of commission.

Know ye that we have assigned you jointly and severally and every one of you our justices to keep our peace in our county of W. *And to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our said county (as well within liberties as without) according to the force, form, and effect of the same; And* Jurisdiction of justices out of sessions.

to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; And to cause to come before you, or any of you, all those who to any one or more of our people concerning their bodies or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons until they shall find such security to cause to be safely kept.

In sessions. *We have also assigned you, and every two or more of you (of whom any one of you the aforesaid* A. B. C. D. &c. *we will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, inchantments, sorceries, arts magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to enquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted; and also of all those who in the aforesaid counties in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; And also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people; And also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and statutes or any one of them therefore made for the common benefit of* England, *and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt; And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premises or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; And of all and singular articles and circumstances, and all other things whatsoever, that concern the premises or any of them, by whomsoever and after what manner soever in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; And to inspect all indictments whatsoever so before you or any of you taken or to be taken, or before others late our justices of the peace in the aforesaid county made or taken, and not yet determined; and to make and continue processes thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted until they can be taken, surrender themselves, or be outlawed: And to hear and determine all and singular the felonies, poisonings, inchantments, sorceries, arts magic, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of* England, *as in the like case it has been accustomed, or ought to be done; And the same offenders and every of them for their offences by fines, ransoms, amerciaments, forfeitures, and other means as according to the law and custom of* England, *or form of*

the ordinances and statutes aforesaid it has been accustomed, or ought to be done to chastise and punish.

Provided always, that if a case of difficulty upon the determination of any of the premises before you or any two or more of you shall happen to arise, then let judgment in no wise be given thereon before you or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county. (a)

And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premises, you diligently apply yourselves; and that at certain days and places which you or any such two or more of you as is aforesaid shall appoint for these purposes into the premises ye make inquiries; and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England; *Saving to us the amerciaments, and other things to us therefrom belonging.*

And we command by the tenor of these presents our sheriff of W. *that at certain days and places, which you or any such two or more of you as is aforesaid shall make known to him, he cause to come before you or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premises shall be the better known and enquired into.*

Lastly, We have assigned to you the aforesaid A. B. *keeper of the rolls of our peace in our said county; And therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.*

In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, &c.

George *the fourth*, &c.] This manner of issuing the commission in the king's name seems to be founded on stat. 27 *H.* 8. *c.* 24. § 2. 6. 19., which enacts that all justices of the peace shall be made by letters patent under the king's great seal, in the name and by authority of the king; but reserves to all cities and towns corporate which have justices, the liberties which they have enjoyed in that behalf. See p. 132.

27 H. 8. c. 24. Justices appointed by H. M. Exceptions.

To A. B., C. D., &c. *greeting.*] From the persons here named in the commission, it may be proper to consider who may, or may not, be justices of the peace.

By stats. 13 *R.* 2. *st.* 1. *c.* 7. and 2 *H.* 5. *st.* 2. *c.* 1. The justices shall be made within the counties of the most *sufficient* knights, esquires, and gentlemen of the law.

Who shall be justices.

And by stat. 18 *G.* 2. *c.* 20. § 1. It is enacted as follows; *viz.* "No person shall be capable of being a justice of the peace, or of acting as such for any county, riding, or division, within that part

18. G. 2. c. 20. Qualification.

(*a*) It appears not to have been unusual formerly for justices in sessions to reserve cases of doubt or difficulty, and submit them to the judges of assize. This practice has been little resorted to in modern times: though it is sufficiently obvious, that attention to the caution here given might occasionally prevent an erroneous judgment, the hardship of which must on any subject be severely felt, but particularly in a criminal case, where the prisoner is in indigent circumstances and unable to defray the expenses of a writ of error. — *Editor.*

18 G. 2. c. 20. of *Great Britain* called *England*, or the principality of *Wales*, who shall not have either in law or equity, to and for his own use and benefit, in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more life or lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, or hereditaments, lying or being in that part of *Great Britain* called *England* or the principallity of *Wales*, of the clear yearly value of 100*l.* over and above what will satisfy and discharge all incumbrances that affect the same, and over and above all rents and charges payable out of or in respect of the same; or who shall not be seised of or entitled unto, in law or equity, to and for his own use and benefit, the immediate reversion or remainder of and in lands, tenements, or hereditaments, lying or being as aforesaid, which are leased for one, two or three lives, or for any term of years, determinable upon the death of one, two, or three lives, upon reserved rents, and which are of the clear yearly value of 300*l.*"

1 M. sess. 2. c. 8. Disqualification. By stat. 1 *M. sess.* 2. *c.* 8. § 2. No *sheriff* shall exercise the office of a justice of the peace during the time that he acts as sheriff. And the reason seems to be, because he cannot act at the same time both as judge and officer, for so he would command himself to execute his own precepts. *Dalt. c.* 3.

Also if he be made a *coroner*, this by some opinions is a discharge of his authority of justice. *Dalt. c.* 3.

1 Ed. 6. c. 7. But by stat. 1 *Ed.* 6. *c.* 7. § 3, 4. if he be created a duke, archbishop, marquis, earl, viscount, baron, bishop, knight, judge, or serjeant-at-law, this taketh not away his authority of a justice of the peace. *Dalt. c.* 3.

5 G. 2. c. 18. Also, by stat. 5 *G.* 2. *c.* 18. § 2. No *attorney*, solicitor, or proctor, shall be a justice of the peace for any county, during the time he shall continue in the practice of that business.

§ 4. But this doth not extend to cities or towns, counties of themselves; or to cities, towns, cinque ports, or liberties, having justices of the peace by charter, commission, or otherwise.

§ 5. Nor to peers of parliament, or to eldest sons or heirs apparent of such, or of persons qualified to serve as knight of a shire.

§ 7. Nor to heads of colleges or halls in either of the two universities.

18 G. 2. c. 20. And by stat. 18 *G.* 2. *c.* 20. § 13. This is further extended to divers other persons.

Mayor is a justice, when. Though a man be a *mayor*, it doth not follow that he is a justice of the peace, for that must be by a particular grant in the charter. *Per Holt* C. J. 2 Ld. *Raym.* 1030. But although he be not a justice of the peace by the charter, yet there are many cases wherein he hath the same power as a justice of the peace given unto him by particular statutes; as, for instance, with regard to the customs, alehouses, Lord's Day, swearing, gaming, weights, servants, fuel, leather, orchards, soldiers, and divers others.

1 Ed. 3. c. 16. *Know ye that we have assigned you.*] This is founded on stat. 1 *Ed.* 3. *c.* 16. by which "for the better keeping and maintenance of the peace, the king wills, that in every county, good men and lawful, which be no maintainers of evil, or barretors in the country, shall be assigned to keep the peace."

From this act we are to date that great alteration in our constitution, whereby the election of conservators of the peace was taken from the people, and translated to the assignment of the king. *Lamb.* 20. 1 Ed. 3. c. 16.

And here we may observe, that the commission hath two parts, or consisteth of two different assignments: By this first assignment, any one or more justices have as well all the ancient power touching the peace, which the conservators of the peace had at the common law, as also that whole authority which the statutes have since added thereto. *Dalt. c.* 5. *p.* 15. [The second assignment defines their powers in sessions. See title, **Sessions.** Vol. V.]

Jointly and severally, and every one of you.] Whatsoever any one justice alone may do, the same also may lawfully be done by any two or more justices; but where the law giveth authority to two, there one alone cannot execute it. *Dalt. c.* 6.

And yet where a statute appointeth a thing to be done by two justices or more, if the offence be any misdemeanor or matter against the peace, there upon complaint made of the offence to any of those justices, it seemeth that one of them may grant out his warrant to attach the offender, and to bring him before the same justice and the other justice so appointed (at some convenient place), and then they to hear and determine the same. *Dalt. c.* 6.

But it seemeth that when a thing is appointed by any statute to be done by or before one person certain, such thing cannot be done by or before any other; and by such express designation of one, all others are excluded, and their proceedings therein are *coram non judice. Dalt. c.* 6.

Our justices.] In that the king calls them *our* justices, their authority determines of course by his death or demise. *Dalt. c.* 3.

But by stat. 1 *Ann. st.* 1. *c.* 8. § 2. No patent or grant of any office or employment shall determine by the king's death or demise, but shall continue in force for six months after, unless in the mean time made void by the successor. 1 An. st. 1. c. 8. How far dependant on the king's demise.

Also, before his death or demise, the king may determine the commission at his pleasure; and that either expressed, as by writ under the great seal, or by implication, by making a new commission, and leaving out the former justices' names. But until notice, or publishing of the new commission, the acts of the former justices are good in law. *Dalt. c.* 3.

But to mayors and chief officers in corporations, which have the authority of justices of the peace, or of conservators of the peace, by grant under the king's letters patent to them and their successors, the authority remaineth, notwithstanding the king's death or demise. *Dalt. c.* 3. As to officers in corporations.

Neither can the king discharge these at his pleasure: but yet such grants and charters may for some great and general defect, or miscarriage, in the execution of the powers herein granted, be repealed, and the liberties seized. *Dalt. c.* 3. *p.* 8.

Justices to keep our peace.] Although they are in no part of the commission called *keepers of the peace*, yet inasmuch as by the 18 *Ed.* 3. *c.* 2. they are expressly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace, and their usual description in certioraris is by the name of

keepers of the peace, it hath been adjudged that in the caption of an indictment, *keepers of the peace and justices of our lord the king*, is good without expressly naming them *justices of the peace*. 2 *Haw. c.* 8. § 32.

To keep our peace.] These words seem to give them the authority which the conservators of the peace had at common law; and all that follows in the commission, seems an addition to the power of the ancient conservators.

Our peace.] It hath been resolved that the description of justices of the peace, by the name of *justices of our lord the king to keep the peace*, is good, without saying the *peace of our lord the king;* for that is necessarily implied. 2 *Haw. c.* 8. § 32.

Also, by these words *our peace*, when the king dies, the surety of the peace is discharged, for when he is dead, it is not his peace. *Cromp.* 124.

How far limited to his county.

In our county of W.] Here are two considerations: One is, how far a justice can act when he is out of the county; and the other is, when he is in the county, how far his power extends to other counties.

As to the former case, when he is out of the county, it is said that the justices have no *coercive* power when out of the county; and therefore, that an order of bastardy, or for payment of labourer's wages, made by them out of the county, is not binding. Yet it is said, that *recognizances* and *informations* voluntarily taken before them in any place are good. 2 *Haw. c.* 8. § 28.

Although it be generally true that a justice of the peace hath no jurisdiction over offences committed *out* of his county, yet there are cases where the presence of an offender *within* his county gives him authority, arising out of the necessity of preserving the peace, to proceed against such offender.

Thus, it has been long settled, that if a man commit felony in the county of *C.* and goes into the county of *W.*, a justice of the peace of the latter county may take his examination and information against him in that county, and may commit him, and bind over the witnesses to give evidence at the trial, and in short proceed as if the offence had been committed within his jurisdiction. 2 *Hale*, 51.

And upon the same principle, it has been decided in more modern times, that a justice of the peace may proceed with respect to a man coming into his county, after having committed a felony on the high seas, and may commit him for trial at the next session of *oyer* and *terminer* and gaol delivery, to be held for the jurisdiction of the admiralty of *England*, and bind over the witnesses to appear thereat; and if the offence be bailable before either one or more justices, the requisite number of justices may take a valid recognizance for the appearance of the person accused at such session, there to answer to such matters as shall, on the king's behalf, be objected against him. *Rex* v. *Muilman*, *Park.* 241.

28 G. 3. c. 49. Justices acting for two or more counties, being adjoining counties.

And by stat. 28 *G.* 3. *c.* 49. § 1. it is enacted, "that it shall and may be lawful for any justice or justices of the peace, acting as such, for any two or more counties, *being adjoining counties*, to act as a justice or justices of the peace in all matters and things whatsoever, concerning or in any wise relating to any or either of the said counties, and that all act and acts of such justice or

justices of the peace, and the act and acts of any constable or other officer in obedience thereto, shall be as valid, good, and effectual in the law, to all intents and purposes whatsoever, as if such act or acts of the said justice or justices had been done in the county or counties to which such act or acts more particularly relate; and all constables and other officers of the said county or counties to which such act or acts relate, are hereby authorised and required to obey the warrants, orders, directions, act and acts of such justice or justices so granted, given, and done, and to do and perform their several offices and duties, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty." 28 G.3. c.49.

Provided always, that such justice be personally resident in one of the said counties at the time of doing such act; and that such warrants, orders, or directions, be directed and given in the first instance to the constable or other officer of the county to which the same more particularly relate.

§ 2. And it shall be lawful for any constable or other peace officer, or any other person apprehending or taking into custody any offender, and whom they lawfully may and ought to apprehend by virtue of their office, or otherwise howsoever, to convey him to any justice acting for the said county, and resident in such adjoining county; and so to act in all things as if the said justice were resident within the said county to which they respectively belong. And all persons obstructing such constables, or other peace officers, in the execution of their respective offices in such adjoining county, shall be liable to the same pains and penalties, as if the same obstruction had been committed in the county for which the said constables or other peace officers were appointed to act.

§ 3. And it shall be lawful for any sheriff, or other person deputed by him or acting under his authority, constable, peace officer, or other person, lawfully taking into or having in his custody any offender, whom he might lawfully convey to gaol or any place of safe custody, to convey such person into and through any part of the said counties so adjoining, in the way to such gaol, or place of safe custody, within the county wherein such offence was committed. And all persons escaping from such custody, or aiding or assisting such escape, or rescuing such offender so in custody, shall be subject to the like pains and penalties for such escape and such aid and such rescue, as if the same had been done in the county wherein such offence was committed.

24 G.2. c.55. Person escaping out of the jurisdiction of the justice who shall grant a warrant against him.

And as to the latter case, wherein it is supposed that his power is limited unto that county only, it is enacted by stat. 24 *G.* 2. *c.* 55. that if any person against whom a warrant shall be issued shall escape, go into, reside, or be in any other county, &c. or place, out of the jurisdiction of the justice granting the warrant, any justice of the county, &c. or place, where such person shall escape, go into, reside, or be, upon proof on oath of the hand-writing of the justice granting such warrant, shall indorse (*a*) his name thereon, which shall be a sufficient authority (See *Rex* v. *Kynaston*, 1 *East*, 117.), to the person bringing such warrant, and to all others to whom it was originally directed, to execute the warrant

(*a*) For the form of such indorsement, see *tit.* Warrant, Vol. V.

24 G. 2. c. 55. in such other jurisdiction, and carry the offender before the justice who indorsed, or some other justice of the county, &c. where it was indorsed, in case the offence be bailable, and the offender able and willing to give bail to appear at the next assizes or sessions where the offence was committed, and shall deliver the recognisances and examinations to the person apprehending, who shall deliver the same to the clerk of assize or of the peace. And if the offence be not bailable, or bail be not given, the constable shall carry the offender before a justice of the county, &c. where the offence was committed.

Justices either of the county from which tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders in their respective counties. Unless facts are stated to make the contrary appear, the court always presumes in favour of the acts of inferior jurisdictions. *Rex* v. *Morgan*, *Cald.* 156.

9 G. 1. c. 7. May act within a city that is a county of itself.

Also, by stat. 9 *G.* 1. *c.* 7. § 3. A justice dwelling in a city or precinct that is a county of itself, within the county at large, for which he is appointed justice, may act at his own dwelling-house for such county at large.

28 G. 3. c. 49. In what cases justices for counties may act within any city being a county of itself.

And whereas doubts have arisen with respect to the construction of the said act, for the removing thereof it is enacted by stat. 28 *G.* 3. *c.* 49. § 4. That it shall and may be lawful for any justice or justices of the peace, acting for any county at large, to act as such at any place within any city, town or other precinct, being a county of itself, and situate within, surrounded by, or adjoining to any such county at large; and that all and every such act and acts, matters and things, done by such justice or justices of the peace for the said county at large, within such city, town or other precinct, shall be as valid and effectual in the law as if the same had been done within the said county at large to all intents and purposes whatsoever: Provided always, That nothing in this act contained shall extend or give power to the justices of the peace for any county at large, not being justices for such city, town or other precinct, or any constable or other officer acting under them, to act or intermeddle in any matters or things arising within any such city, town, or precinct, in any manner whatsoever.

1 & 2 G. 4. c. 63.

Justices of the peace, acting for any county at large, &c. may act as such in places having exclusive jurisdiction, not being a county of itself, within or adjoining such county.

And by stat. 1 & 2 *G.* 4. *c.* 63. after reciting stat. 28. *G.* 3. *c.* 49. "and whereas doubts have been entertained whether justices of the peace for counties at large are thereby empowered to act for such counties at large within any city, town or other precinct having exclusive jurisdiction, but not being a county of itself; it is enacted that it shall and may be lawful for any justice or justices of the peace acting for any county at large, or for any riding or division of a county in which there are several and distinct commissions of the peace, to act as a justice or justices for such county at large, riding or division, in sessions or otherwise, at any place within any city, town or other precinct, having exclusive jurisdiction, but not being a county of itself, and situate within, surrounded by or adjoining to any such county at large, riding or division; and that all and every such act and acts, matters and things which shall be done or which may heretofore have been done by such justice or justices of the peace for the said county at large, riding or division, within such city, town, or other precinct, shall be as valid and effectual in the law as if the same had been done

within the said county, riding or division, to all intents and purposes whatsoever: Provided always, that nothing in this act contained shall extend or give power to the justices of the peace for any county at large, riding or division, not being justices for such city, town or other precinct, or any constable or other officer acting under them, to act or intermeddle in any matters or things arising within any such city, town, or precinct, in any manner whatsoever." 1&2 G.4. c.63. Proviso.

And by stat. 33 *G.* 3. *c.* 55. § 3. Where distress cannot be found in the jurisdiction of justices granting warrants for that purpose, it is provided that the same may be levied in any other county or place, upon such warrant being indorsed by a justice of such other county or place. (*a*) 33 G. 3. c. 55. Distraining in another county.

And to keep and cause to be kept all ordinances and statutes for the good of the peace.] It seems certain that by virtue hereof they may execute all statutes whatsoever, made for the better keeping of the peace, and consequently those of *Winchester* and *Westminster*, and all others concerning the peace made before the reign of *Ed.* 3. in whose time (as hath been said) justices of the peace were first instituted: for all those statutes were expressly mentioned in the ancient commissions of the peace, and have always been undoubtedly taken to be included in these general words of the present commission. And yet none of the statutes which ordain the office of justices of the peace say any thing concerning the execution of the said former statutes; so that the power of justices of the peace in relation to those statutes seems entirely to depend on the king's commission, and yet hath always been unquestionably allowed. From whence it appears that regularly the king by his commission, may authorise whom he pleases to execute an act of parliament. 2 *Haw. c.* 8. § 28.

But if no power be expressly given in any such statute to any one justice alone, he cannot proceed upon it, but he may prefer the cause at the sessions, and work it to a presentment upon the statute. *Dalt. c.* 5.

But besides the statutes relating to the peace, there are also many other statutes which are not specified in the commission, and yet are committed to the charge and care of the justices of the peace by the express words of such statutes: and all such statutes are to them a sufficient warrant and commission of themselves, although they be not recited in the commission, and are to be executed by them, according as the same statutes themselves do severally prescribe and set down. *Dalt. c.* 5.

Statutes for the good of the peace.] Although a præmunire is not within the letter of the commission, yet inasmuch as it is against the peace of the king and of the realm, any justice may cause a person to be apprehended for such offence, and take his examination and informations against him, and certify the same to the king's bench or gaol delivery. And the same may be said of other like offences. 2 *Haw. c.* 8. § 34.

And for the quiet government of our people.] Of our people;— yet it seemeth that the subjects of a foreign prince coming into *England* and living under the protection of our king, shall be

(*a*) Respecting which, see more fully, *Distress by warrant of justices of the peace*, *tit.* Distress, Vol. I. See also stat. 54 G. 3 c. 170. § 12. Vol. IV. § II. 10. p. 147.

subject to and have the benefit of the laws in respect of the local allegiance which they owe to him. 1 *Hale*, 93, 94.

As well within liberties as without.] By these words shall be intended such liberties and franchises which have return of writs, and not such as are counties of themselves, as *London*, *Norwich*, *York*, and such like. *Cromp.* 8.

Concurrent jurisdiction.

But yet from hence it seems clearly to follow, that they may execute their office within a town (not being a county of itself) although it have a special commission of the peace for its own limits, unless such commission have a clause, that no other justices except those named in it shall any way concern themselves in the keeping of the peace within the liberties of such town.

Exclusive jurisdiction by charter.

Ld. *Hale*, treating on the same subject, says, if the king by charter grant to a corporation that the mayor, and recorder, or other, shall be justices within the same, yet if there be no words of exclusion, the justices of the county have a concurrent jurisdiction: But if this franchise of being justices be granted, *so that the justices of the county shall not intermeddle* (*se non intromittant*), then, though a subsequent commission be granted in the county at large, it seems they have no jurisdiction in this corporation or town; yet it is questionable, whether an indictment in the franchise be void, or only a contempt in the justices. 2 *Hale*, 47.

But in *Talbot* v. *Hubble*, 2 *Str.* 1154, The question was, whether, as the city of *New Sarum* had an exclusive commission of the peace, the justices of the county of *Wilts* could by virtue of stats. 12 *C.* 2. *c.* 23. and 15 *C.* 2. *c.* 2. act in excise matters within the city. This case was argued three times at the bar, and this term (*T.* 14 *G.* 2.) *Lee* Ch. J. delivered the resolution of the court: 1. That the crown might grant to any city to have justices of their own within themselves, and exclude the county justices from intermeddling in the ordinary business of a justice of the peace. 2. That in such case, the act of the county justices would be *void*, and not to be considered only as a breach of the franchise. 3. That though the 12 *C.* 2. gives the jurisdiction in the excise matters to the justices of the peace residing near the place where the forfeiture shall be made, or offence committed, yet it never was the design of the legislature to make any alteration in the respective jurisdictions of the justices, but only to vest the excise jurisdiction of justices of counties, cities, and places, with respect to their several local jurisdictions, within such places.

And in *Blankley* v. *Winstanley*, 3 *T. R.* 279., it was adjudged that a charter granting jurisdiction to borough magistrates over a district not within the borough, does not exclude the county justices from having a concurrent jurisdiction, without express words in the charter; and though such charter contain words of reference to former charters in which exclusive jurisdiction is given to the borough justices within the borough, and add that they shall have jurisdiction within the new district *in tam amplo modo & formâ, &c.* yet, if there be in the latter charter a saving clause of the rights of the crown and of all other persons, the borough magistrates have only a concurrent jurisdiction with the county justices.

So, by charter the mayor and some of the aldermen of *London* have jurisdiction in *Southwark:* but as the charter contains no

non intromittant clause as to the justices of the county of *Surrey*, the latter have a concurrent jurisdiction with the former. *Rex* v. *T. Sainsbury, Esq. and another*, 4 *T. R.* 451.

In truth, the exclusion of county justices from acting in particular districts has always being watched with a jealous eye; and nothing but express words are sufficient to exclude them. 3 *T. R.* 287.

Where two sets of magistrates have a concurrent jurisdiction, and one appoints a meeting to grant ale licences, their jurisdiction attaches so as to exclude the others from appointing a subsequent meeting; but they may all meet together on the first day. But if after such appointment the other set of magistrates meet on a subsequent day and grant other licences, their proceeding is illegal, and the subject of an indictment: indeed it is of infinite importance that the proceedings of magistrates should not only be substantially good, but also that they should be decorous. 4 *T. R.* 451. 457.

Concerning their bodies.] *Lambard* and *Dalton* both think it seems clear, that if a man is in fear that another will hurt his *servants*, or cattle, or other *goods*, the surety of the peace shall not be granted; but Mr. *Dalton* is of opinion that if one threatens to hurt a man's *wife* or *child*, he may crave the peace by virtue of of these words. *Lamb.* 82. *Dalt.* *c.* 116.

Have used threats.] It should seem, from the many causes which from time to time have been adjudged sufficient to bind to the good behaviour, that this expression is not to be understood of *words* only, but of threatening *actions* likewise, or any thing whereby a man has just cause to apprehend the burning of his houses, or some bodily hurt to be done to him.

To find sufficient security.] This is done by recognizance; by a reasonable intendment of law, more than by any especial law in that case provided. *Cromp.* 125.

For the peace or their good behaviour.] Ld. *Hale*, speaking of stat. 34 *Ed.* 3. *c.* 1. (on which Mr. *Crompton* says the power of justices to bind to the good behaviour is grounded) says, that this power of binding, though expressed generally, and without any time limited, yet is not intended to be perpetual, but in nature of bail, *viz.* to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 *Hale*, 126.

But in a recent case it has been holden by the Court of K. B., that a justice of the peace is authorised to require surety of the peace for a limited period (*e. g.* two years,) according to his discretion, and that he need not bind the party over to the next sessions only. *Willes* v. *Bridger*, 2 *B. & A.* 278.

The power of the justices assembled at their sessions, to take surety for the peace, is derived from their commission, and is found in the first clause or *assignavimus* of the commission, and by that clause the power is given to any one justice, and not to two or more, as is done by the second clause, which relates to the taking and trial of indictments, and some other matters: and, therefore, if a single justice cannot take security for a longer period than until the next sessions, it will be difficult to shew that a number of justices assembled at sessions may take it for a longer time, and unless they can do so, then, as it may be in most cases expedient that the period of surety should be longer than

the interval between sessions and sessions, both parties, or at least the party required to give the surety, and his mainpernors must be harassed by repeated attendances to accomplish an object, which may be as well effected by a single attendance, at which the whole matter may be heard and discussed. *Per Abbott* Ch. J. *S. C.* 2 *B.* & *A.* 290.

6 G.1. c.19. *In our prison.*] The king's prison is the common gaol of the county: But by stat. 6 *G.* 1. c. 19. § 2. the justices may commit criminals, and persons charged with small offences, either to the gaol, or to the house of correction, by their discretion, for such offences, or for want of sureties.

Powers assigned to justices in sessions. *We have also assigned you and every two or more of you.*] Here beginneth the second part of the commission, or the second assignment: all the business within which assignment belongeth to the sessions of the peace. *Dalt. c.* 5.

And by this it appeareth, that two justices may hold a sessions, but that one justice cannot. *Cromp.* 6, 7.

Of whom any one of you the aforesaid A. B. C. D. &c. *we will shall be one.*] This clause, which gives power to two or more justices to hear and determine offences, requires that at least one of those justices be of that select number, which is commonly termed of the *Quorum* (from that word in the *Latin* commissions, *Quorum—unum esse volumus*). For those of the *quorum* were wont to be chosen specially for their knowledge in the laws; and this was it which led the makers of several ancient statutes expressly to enact, that some learned in the laws should be put into the commission of the peace; and (to say the truth) all statutes that require the presence of the *quorum* do tacitly signify such a learned man. For albeit that a discreet person (not conversant in the study of the laws) may sufficiently follow sundry particular directions concerning the service of the peace, yet when the proceedings must be by way of presentment or indictment, upon the evidence of witnesses, and oaths of jurors, and by the order of hearing and determining according to the straight rule and course of the law, it must be confessed that learning in the law is very necessary. *Lamb.* 48, 49.

But learning being now greatly advanced and improved since the first institution of this office, this distinction is not of much use, but all or most of the justices are now equally assigned to be

26 G.2. c.27. Quorum. of the *quorum;* and by stat. 26 *G.* 2. *c.* 27. no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument done or executed by two or more justices, *which doth not express* that one or more of them is of the *quorum*, (although the statutes respectively require that one of the justices shall be of the *quorum*) shall be impeached, set aside, or vacated, for that defect only.

7 G.3. c.21. And by stat. 7 *G.* 3. *c.* 21. In cities, boroughs, towns corporate, franchises, and liberties, which have only one justice of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more justices qualified to act therein, shall be valid and effectual in law, although neither of the said justices are of the *quorum*.

4 G. 4. c. 27. And now stat. 4 *G.* 4. *c.* 27., after reciting stat. 7 *G.* 3. *c.* 21. "And, Whereas it is expedient that the provisions of the said act should be extended to such cities and other jurisdictions as have

two, or any other limited number of justices of the *quorum*, qualified to act within the same," enacts, "that from the passing of this act, (23d *May*, 1823) in all cases where the number of justices of the peace for any city, borough, town corporate, franchise, liberty, or other local jurisdiction, is limited; and any one, two, or more of such justices only are of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments which shall be made, done, or executed, either in or out of the general quarter sessions, or petty sessions, or any adjournment thereof, by virtue of any charter or grant, or of any act of parliament made or to be made by any two or more justices of the peace acting within the same, though neither of the said justices be of the *quorum*, shall be valid in law to all intents and purposes, as if the said justices had been of the *quorum*, any grant, charter, law, or custom to the contrary thereof in any wise notwithstanding." 4 G. 4. c. 27.

By the oath of good and lawful men.] That is, by a jury sworn.

Of all and all manner of felonies.] That is, either by the common law, or by statute. *Cromp.* 8.

Felonies.] Though the commission doth not mention *murders* and *manslaughters* by express name, but only felonies generally, yet by these general words they have power to hear and determine murder and manslaughter, and also may take an indictment of *se defendendo*, contrary to the opinions of *Fitzherbert* and *Staundforde*. But though the justices have this power, yet they do not ordinarily proceed to hear and determine these offences, and rarely other offences without clergy, both because of the monition and clause in their commission, in case of difficulty to expect the presence of the justices of assize; and also because of the direction of stat. 1 *&* 2 *P. & M. c.* 13., which directs justices 1 & 2 P. & M. c. 13. of the peace, in case of manslaughter and other felonies, to take the examination of the prisoner and the information of the fact, and put the same in writing, and then to bail the prisoner, if there be cause, and to certify the same with the bail at the next gaol delivery: And therefore, in cases of great moment, they bind over the prosecutors, and bail the party, if bailable, to the next gaol delivery; but in smaller matters, as petit larceny, and some cases within clergy, they bind over to the sessions: But this is only in point of discretion and convenience, not because they have not jurisdiction of the crime. 2 *Hale*, 46.

So also, an inquisition of *self-murder*, if the body cannot be seen, and so not enquired of by the coroner, may be taken before justices of the peace; for it is a felony, and within the extent of their commission. 1 *Hale*, 414.

So also, if a person hath committed *treason*, though the justices have no cognisance of it as treason, yet they have cognisance of it as a felony, and as a breach of the peace; and therefore a justice of the peace, upon information on oath, may issue his warrant to take the traitor, and may take his examination, and commit him to prison. 1 *Hale*, 580.

Poisonings.] The word in the *Latin* commissions was *veneficia;* and before stat. 9 *G.* 2. *c.* 5, which abolisheth witchcraft, was in 9 G. 2. c. 5. the *English* translations rendered witchcrafts.

Inchantments, sorceries, arts magic.] These also are abolished by the said statute, § 3., which enacts, that no prosecution shall

9 G. 2. c. 3. thereafter be commenced against any person for witchcraft, sorcery, inchantment, or conjuration.

And from the words continuing in the commission when the crime itself is abolished, we may observe the averseness in the superior courts from altering ancient forms.

34 Ed. 3. c. 1. *Trespasses.*] This is founded on stat. 34 *Ed.* 3. *c.* 1., which enacts that the justices assigned shall have power to restrain the offenders, rioters, and all other barrators, and to chastise them according to their trespass or offence.

Libels are within the jurisdiction of the justices.

And upon this Mr. *Hawkins* observes, that the word *trespass* is of very general extent, and in a large sense not only comprehends all inferior offences, which are properly and directly against the peace, as assaults and batteries, and such like, but also all others which are so only by construction, as all breaches of the law in general are said to be. Yet it hath been of late settled, that justices of the peace have no jurisdiction over forgery or perjury at the common law; the principal reason of which resolution, he says, as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass*, in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the said statute and commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 *Haw. c.* 8. § 38.

The word for trespasses in the old *Latin* commissions, is *transgressiones.*

Forestallings, regratings, engrossings.] Over these offences the justices in sessions had jurisdiction given to them by stat. 5 & 6 *Ed.* 6. *c.* 14. which is now repealed; but the same still continue offences punishable by indictment at the common law.

Extortions.] The intent of this word is, to enquire of those who have done excessive wrongs; for wrong done by any one is properly trespass, but excessive wrong done by any one is called extortion; and this is more properly in officers, as sheriffs, mayors, bailiffs, escheators, and other officers whatsoever, (as well spiritual as temporal,) who by colour of their office have done great oppression and excessive wrong to the king's subjects, in taking excessive rewards or fees for doing their offices. *Cromp.* 8.

The justices have no express power given to them over this offence by any statute; upon which Mr. *Hawkins* observes, that justices of the peace have jurisdiction of all inferior crimes within their commission, whether such crimes be mentioned in any statute concerning them or not; for that all such crimes are either directly or at least by consequence and judgment of law against the peace; and upon this ground principally, he says, as he apprehended, it was lately resolved, that they may take an indictment of *extortion.* 2 *Haw. c.* 8. § 39.

And of all and singular other crimes and offences of which the justices of our peace may or ought lawfully to enquire.] Which general words seem to include the vast number of offences, over which they have a jurisdiction given to them by many

statutes, and which are not particularly mentioned in the commission.

And also all of those who in companies against our peace in disturbance of our people with armed force have gone or rode.] By these words they are to enquire of riots, routs, and all unlawful assemblies. *Cromp.* 8.

Weights or measures.] This clause was first established by stat. 34 *Ed.* 3. *c.* 5. And they have further power given herein by several subsequent statutes, all which statutes must be strictly pursued in relation to the several offences.

Selling victuals.] Over this they have a jurisdiction given to them by stat. 2 & 3 *Ed.* 6. *c.* 15. intituled *The bill of conspiracies of victuallers and craftsmen.*

And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themselves.] This clause is as ancient as stat. 4 *Ed.* 3. *c.* 2. on which it is founded.

And it hath been suffered to remain in the commission, not as of any necessity at all (since it is incident to every court of record to do correction upon whatsoever officers and ministers do serve them), but only for the plainer declaration of the power of these justices in that behalf, and for the more assured terrifying of such as shall, either of contempt or negligence, do that which is amiss. *Lamb.* 49.

And to inspect all indictments so before you taken.] But they cannot proceed upon indictments taken before coroners, or justices of oyer and terminer or gaol delivery, but on indictments taken before the sheriff in his tourn they may proceed. *Hale's Sum.* 168.

Or before other our late justices.] This is founded on stat. 11 H. 6. *c.* 6. which enacts that no indictment, plea, suit, or process, shall be discontinued by a new commission; but the justices in the new commission, after they shall have the records of the same pleas and processes before them, shall have power to continue the said pleas and processes, and to hear and finally to determine the same, as the former justices might have done. 11 H. 6. c. 6.

And to make and continue processes.] This is by *venire distringas, capias,* or *exigent,* as the case shall be. And it differs from a warrant, in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the king or of the justice; but the process issues after indictment, and must be in the name of the king only. *Dalt. c.* 193.

Until they can be taken, surrender themselves, or be outlawed.] For the process is sent out to this end, that either the party shall come in to answer and to be justified by the law; or else that he shall for his contumacy be deprived of the benefit of the law. *Lamb.* 521.

Or be outlawed.] It is observable that the power of the justices stops here, and goes no further, so that they cannot make out a *capias utlagatum,* but the outlawry must be certified into the king's bench. *Lamb.* 521. 2 *Hale,* 52.

But by 12 *Rep.* 103. they that have power to award process of outlawry have also a power to award a *capias utlagatum,* as incident to their authority and jurisdiction.

Hear and determine.] This power was first given to them by

stat 18 *Ed.* 3. *st.* 2. *c.* 2., and afterwards confirmed and enlarged by divers other statutes.

Yet this clause doth not in propriety make the justices of the peace justices of oyer and terminer, because that is a distinct commission; and therefore a statute, limiting an offence to be heard and determined before justices of oyer and terminer, gives not the power therein to justices of the peace. *Hale's Sum.* 165.

And thereupon it is said that although they have power to hear and determine felonies, yet they cannot deliver a person suspected thereof by proclamation (as justices of gaol delivery may) until an inquisition taken; but if an inquisition be taken, and an *ignoramus* found, they may deliver him, as it seemeth. 2 *Hale*, 46. 47.

Likewise, although commissioners of oyer and terminer may indict and try at the same sessions, yet it hath been ruled otherwise in cases of justices of the peace, unless by consent: but certainly constant usage and learned opinion must give that exposition upon those resolutions, that it must extend only to popular actions or indictments for misdemeanors, and not to cases of felony. 2 *Hale*, 48.

By fines, ransoms, amerciaments, forfeitures, and other means—to chastise and punish.] Hereby the justices are now armed with far more ample authority and power than the ancient conservators of the peace were; for they had no power to convene the offender before them, nor to examine, hear, or determine the cause, nor to punish, except in some few cases, as mentioned before. *Dalt. c.* 6.

But the justices may not award any recompence to the party wronged, otherwise than by persuasion. *Dalt. c.* 5.

Nevertheless, these words are inserted, not as of necessity (for the punishment of all offenders is implied in the word *determine*), but for the plainer declaration of the justices' power, and for the more assured terrifying of offenders. *Lamb.* 49.

If a case of difficulty shall happen to arise.] That is, a difficulty in point of law. *Cromp.* 6. Vide *ante*, p. 131.

Then let judgment in nowise be given.] But yet if they list to proceed without the judge's advice, their judgment is not void; but it standeth good and effectual, until it be reversed by a superior court. *Lamb.* 50.

At certain days and places.] That is, when they hold their sessions, which they are empowered and required to do by several statutes.

Lastly, we have assigned you the aforesaid A. B. *keeper of the*
37 H. 8. c. 1. *rolls.*] This is in pursuance of stat. 37 *H.* 8. *c.* 1. which enacts that the lord chanceller shall by commission assign such person to be *custos rotulorum* as the king shall by writing under his hand appoint.

For further particulars respecting the powers and duties of justices in sessions, and their manner of proceeding therein, see title Sessions, Vol. V.

53 G. 3. c. 72. *Stat.* 53 *G.* 3. *c.* 72. provides for the more effectual administration of the office of a justice of the peace within the townships of *Manchester* and *Salford*: and also it gives certain powers to the constables of those places.—Being altogether local in its provisions, it is only *noticed* here.

§ III. Oaths of Office and Qualification to be taken by Justices of the Peace.

On renewing the commission of the peace (which generally happeneth as any person is newly brought into the same) there cometh a writ of *dedimus potestatem* directed out of chancery to some ancient justice (or other) to take the oath of him which is newly inserted, which is usually in a schedule annexed, and to certify the same into that court, at such a day as the writ commandeth. Unto which oath are usually annexed the oaths of allegiance and supremacy. *Lamb.* 53.

The form of which oath of office at this day is as followeth: Oaths of office.

Ye shall swear, that as justice of the peace in the county of W. *in all articles in the king's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the realm, and statutes thereof made; And ye shall not be of counsel of any quarrel hanging before you: And that ye hold your sessions after the form of the statutes thereof made; And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment (or embezzling) and truly send them to the king's exchequer. Ye shall not let for gift or other cause, but well and truly ye shall do your office of justice of the peace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute. And ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiff of the said county, or other the king's officers or ministers, or other indifferent persons, to do execution thereof. So help you God.*

This oath seems to be founded on stat. 13 *R.* 2. *c.* 7., which enacts, that the justices shall be sworn duly and without favour, to keep and put in execution all the statutes and ordinances touching their offices. 13 R. 2. c. 7.

By stat. 1 *G.* 3. *c.* 13. § 2., it is enacted, "That from and after the passing this act, no person who hath already taken, or shall hereafter take the oaths usually taken by a justice of the peace, under a writ or commission of *dedimus potestatem* issued, or which shall be issued from the clerk of the crown, shall be obliged or compellable to sue out or have any other *dedimus potestatem* from the said clerk of the crown, to authorise any person or persons therein to be named to administer again to any such justice, on any new commission of the peace being issued under the great seal of *G. B.* for any county, city and county, town and county, riding or division, in *England* or *Wales*, the oaths usually annexed to such *dedimus*, and taken by a justice of the peace; but that the clerk of the peace, or his deputy, of every county, city and county, town and county, riding or division, in *England* and *Wales*, for which any such justice of the peace hath already acted and qualified, or hereafter, before the issuing any such new commission of the peace, shall act and qualify himself, as before mentioned, shall, on every such new commission of the peace being issued, prepare a parchment roll, with the oaths annexed to, and usually taken under the said writ or commission of *dedi-*

1 G. 3. c. 13. Proviso for such as have once taken the oaths under a *dedimus potestatem*.

1 G. 3. c. 13. *mus potestatem*, by justices of the peace, ingrossed on such roll, and shall administer, without fee or reward, the oaths in such roll specified to every such justice of the peace, within the respective counties, cities and counties, towns and counties, ridings or divisions, for which he shall respectively act, or intend to act, and who shall desire to take such oaths; and that every such justice of the peace, after the taking the oaths contained in the said roll, shall subscribe his name on the said parchment roll; and the said roll, with the oaths so taken and subscribed, shall be kept by the respective clerks of the peace of the respective counties, cities and counties, towns and counties, ridings and divisions, in *England* and *Wales*, for the time being, amongst the records of the sessions for the said respective counties, cities and counties, towns and counties, ridings and divisions."

7 G. 3. c. 9. Justices not obliged to take and subscribe oaths of said act more than once during H. M.'s reign, &c.

By stat. 7 *G.* 3. *c.* 9., after reciting stat. 1 *G.* 3. *c.* 13., it is enacted, "That all persons who have been or shall be appointed justices of the peace, by any commission or commissions granted or to be granted by his present majesty, and have taken and subscribed, or shall take and subscribe the oaths mentioned in the said act made in the first year of his present majesty's reign; and all persons who shall be appointed justices of the peace by any commission or commissions, which shall be granted after his majesty's demise, by any of his successors, kings or queens of this realm, and shall have, after the issuing of the first commission, whereby such persons shall be appointed justices of the peace, in the reign of any such king or queen, taken and subscribed the said oaths, shall not be obliged, during the reign of his present majesty, or during any future reign in which such oaths shall have been so taken and subscribed as aforesaid, to take and subscribe the same oaths, for or by reason of such persons being again appointed justices of the peace by any subsequent commission or commissions which shall be granted during any such reign; and shall not incur any penalty or forfeiture for the not taking or subscribing the said oaths."

18 G. 2. c. 20. By stat. 18 *G.* 2. *c.* 20. § 1., after reciting that "whereas by many acts of parliament of late years made, the power and authority of justices of the peace is greatly increased, whereby it is become of the utmost consequence to the common weal to provide against persons of mean estate acting as such: And whereas the laws now in force are not sufficient for that purpose," it is enacted,

Qualification for justice of peace.

"that from and after the 25th day of *March*, 1746, no person shall be capable of being a justice of the peace, or of acting as such for any county, riding, or division, within that part of *Great Britain* called *England*, or the principality of *Wales*, who shall not have either in law or equity, to and for his own use and benefit, in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more life or lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, or hereditaments, lying or being in that part of *G. B.* called *England*, or the principality of *Wales*, of the clear yearly value of one hundred pounds, over and above what will satisfy and discharge all incumbrances that affect the same, and over and above all rents and charges payable out of or in respect of the same; or who shall not be seized of or intitled unto, in law or

equity, to and for his own use and benefit, the immediate reversion or remainder of and in lands, tenements, or hereditaments, lying, or being as aforesaid, which are leased for one, two, or three lives, or for any term of years, determinable upon the death of one, two, or three lives, upon reserved rents, and which are of the clear yearly value of three hundred pounds; and who shall not, before the said 25th day of *March*, or before he takes upon himself to act as a justice of peace, after the said 25th day of *March*, at some general or quarter sessions for the county, riding, or division for which he does or shall intend to act, first take and subscribe the oath following, *videlicet:* 18 G.2. c.20.

I A. B. *do swear, that I truly and* bona fide *have such an estate, in law or equity, to and for my own use and benefit, consisting of* [illegible] ing the nature of such estate, whether messuage, land, rent, tythe, office, benefice, or what else) *as doth qualify me to act as a justice of the peace for the county, riding or division of* ——— *according to the true intent and meaning of an act of parliament, made in the* 18*th year of the reign of his majesty king* George *the second, intituled,* An act to amend and render more effectual an act passed in the fifth year of his present majesty's reign, intituled, *An act for the further qualification of justices of the peace; and that the same* (except where it consists of an office, benefice or ecclesiastical preferment, which it shall be sufficient to ascertain by their known and usual names) *is lying or being, or issuing out of lands, tenements or hereditaments, being within the parish, township or precinct of* ———, *or in the several parishes, townships or precincts of* ——— *in the county of* ——— *or in the several counties of* ——— (as the case may be.) Oath.

Which oath so taken and subscribed as aforesaid, shall be kept by the clerk of the peace of the said county, riding, or division, for the time being, among the records of the sessions for the said county, riding, or division. Oath to be recorded.

§ 2. Every such clerk of the peace shall, upon demand for that purpose made, forthwith deliver a true and attested copy of the said oath in writing, to any person paying for the same the sum of two shillings and no more; which being proved to be a true copy of such oath, to be kept amongst the records as aforesaid, shall be admited to be given in evidence upon any issue in any action, suit, or information, to be brought upon this act. Copy of oath. Fee. Evidence.

§ 3. Any person who shall act as a justice of the peace for any county, riding or division, within that part of *G. B.* called *England*, or the principality of *Wales*, without having taken and subscribed the said oath as aforesaid, or without being qualified according to the true intent and meaning of this act, shall, for every such offence, forfeit the sum of 100*l*., one moiety to the use of the poor of the parish in which he most usually resides, and the other moiety to the use of such person or persons who shall sue for the same, to be recovered, together with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, in which no essoign, protection, wager of law, or more than one imparlance shall be allowed; and in every such action, suit, or information, the proof of his qualification shall lie on such person against whom the same is brought. Unqualified person acting. Penalty. Proof of qualification on defendant.

18 G.2. c.20.

Limitation of acts.

§ 11. Every action, bill, plaint, or information, given by this or the said former act, shall be commenced within the space of six calendar months after the fact upon which the same is grounded shall have been committed.

Defendant to specify lands.

§ 4. If the defendant in any such action, suit or information, shall intend to insist upon any lands, tenements or hereditaments, not contained in such oath as aforesaid, as his qualification to act as a justice of peace in part, or in the whole, at the time of the supposed offence, wherewith he is charged, he shall at or before the time of his pleading, deliver to the plaintiff or informer or his attorney, a notice in writing specifying such lands, tenements and hereditaments (other than those contained in the said oath), and the parish, township, precinct or place, or parishes, townships, precincts or places, and the county or counties wherein the same are respectively situate, lying or being (offices and benefices excepted, which it shall be sufficient to ascertain by their known and usual names), and if the plaintiff or informer in any such action, suit or information, shall think fit thereupon not to proceed any further, he may with the leave of the court, discontinue such action, suit or information, on payment of such costs to the defendant as the court shall award.

Lands not mentioned in oath or notice not allowed.

§ 5. Upon the trial of the issue in any action, suit or information, to be brought as aforesaid, no lands, tenements or hereditaments, which are not contained in such oath and notice as aforesaid, or one of them, shall be allowed to be insisted upon by the defendant, as any part of his qualification.

Qualification by rent only.

§ 7. Where the qualification required by this act or any part thereof consists of rent, it shall be sufficient to specify in such oath or notice as aforesaid so much of the lands, tenements or hereditaments, out of which such rent is issuing, as shall be of sufficient value to answer such rent.

Proviso.

§ 8 In case the plaintiff or informer, in any such action, suit or information, shall discontinue the same, otherwise than aforesaid, or be nonsuit, or judgment be otherwise given against him, that then and in any of the said cases, the person against whom such action shall have been brought, shall recover treble costs.

Places not within act.

§ 12. This act or any thing herein contained, shall not extend, or be construed to extend, to any city or town, being a county of itself, or to any other city, town, cinque-port or liberty, having justices of the peace within their respective limits and precincts, by charter, commission or otherwise; but that in every such city, town, liberty, and place, such persons may be capable to be justices of the peace, and in such manner only, as they might have been if this act had never been made; any thing herein before contained to the contrary thereof in any wise notwithstanding.

Proviso for peers, &c.

§ 13. Nothing in this act, or in stat. *5 G. 2. c.* 18. contained, shall extend to any peer or lord of parliament, or to the lords or others of H. M.'s most honourable privy council, or to the justices of either bench, or to the barons of the court of exchequer, or to H. M.'s attorney or solicitor general, or to the justices of great sessions for the county palatine of *Chester*, and the several counties of the principality of *Wales*, within their respective jurisdictions, or to the eldest son or heir apparent of any peer or lord of parlia-

Eldest son or heir apparent of

ment, or of any person qualified to serve as a knight of a shire, by stat. 9 *Ann.* c. 5.; any thing herein contained to the contrary thereof in any wise notwithstanding.

18 G. 2. c. 20.

any peer, or person qualified to serve as a knight of the shire, or to officers of board of green cloth, &c.

§ 14. Nothing in this act, or in stat. 5 *G.* 2. *c.* 18. contained, shall extend or be construed to extend to incapacitate or exclude the officers of the board of green cloth from being justices of the peace within the verge of H. M.'s palaces, or to incapacitate or exclude the commissioners and principal officers of the navy, or the two under secretaries in each of the offices of principal secretary of state, or the secretary of *Chelsea* college, from being justices of the peace in and for such counties or places where they usually have been justices of the peace; any thing herein contained to the contrary notwithstanding.

Proviso for heads of houses, &c.

§ 15. This act, or any thing herein contained, shall not extend or be construed to extend, to any of the heads of colleges or halls in either of the two universities of *Oxford* and *Cambridge*, or to the vice chancellor of either of the said universities, or to the mayor of the city of *Oxford*, or of the town of *Cambridge*, but they may be and act as justices of the peace of and in the several counties of *Oxford*, *Berks* and *Cambridge*, and the cities and towns within the same, and execute the office thereof as fully and freely in all respects as heretofore they have lawfully used to execute the same, as if this act had never been made; any thing hereinbefore contained to the contrary notwithstanding.

Oaths of allegiance, supremacy, and abjuration.

Also he shall within six months take the oaths of allegiance, supremacy, and abjuration, and make and subscribe the declaration against transubstantiation, in one of the courts at *Westminster*, or at the general or quarter sessions of the place where he shall be or reside, as other persons qualifying for offices. 25 *C.* 2. *c.* 2. § 2.—1 *G.* 1. stat. 2. *c.* 13. § 2.—2 *G.* 2. *c.* 31. § 3, 4. 9 *G.* 2. *c.* 26. § 3.

Indemnity for not taking in time.

N. B. There is a clause of indemnity in some act of parliament almost every session to give further time to justices of the peace to take the said oaths, provided they take the same within the time therein specified, and qualify according to stat. 18 *G.* 2. *c.* 20. And provided also, that the same shall not extend to any person against whom final judgment shall have been given; nor to exempt any such justice from such penalties who shall act without being duly qualified.

25 C. 2. c. 2. 16 G. 2. c. 30.

All persons admitted into office, &c. to take the oath of allegiance and supremacy.

By stat. 25 *C.* 2. *c.* 2. (*the test act*) see tit. Indemnity, § 2. it is enacted, that all persons who shall be admitted into any office or offices civil or military; or shall receive any pay, salary, fee or wages, by reason of any patent or grant of H. M., or shall have command or place of trust from or under H. M., within this realm of *England*, dominion of *Wales* or town of *Berwick* upon *Tweed*, or in H. M.'s navy, or in the several islands of *Jersey* and *Guernsey*, or shall be admitted into H.M.'s or his Royal Highness the Duke of *York's* household, and shall inhabit within the city of *London* or *Westminster*, or within thirty miles distance from the same, shall take the oaths of supremacy and allegiance in chancery or K. B. in open court, between nine and twelve o'clock in the forenoon, and all proceedings there shall cease in the next term after their admittance; and all persons so admitted not having taken such oaths before such court, shall take them at the quarter sessions of the county where they reside, and shall receive the sacrament of the lord's supper within [*three* Extended by stat. 16 *G.* 2. c. 30. § 3 to] *six*

When and where to appear and make oath.

When and where sacra-

25 Car. 2. c. 2.

ment to be received.
Certificate thereof to be delivered into court.

months after admittance, in some public church, on *Sunday* after divine service and sermon.

§ 3. Every person in the court where he takes such oaths shall first deliver a certificate of his having taken the sacrament under the hands of the minister and churchwarden, and shall prove the same by two witnesses upon oath, all which shall be enquired of and recorded in such courts. And see *post*, tit. Office.

1. A person who has qualified for the office of a justice of peace, and acts as such, must have a clear estate of 100l. *per annum*, in law, or in equity, for his own use, in *possession*.
2. In an action against a person for the penalty given by the stat. 18 G. 2. c. 40., for acting as a magistrate without a proper qualification, no notice of action is necessary under stat. 24 G. 2. c. 44.

Wright v. *Horton*, *Yorkshire Sum. Ass.* 1816. 1 *Holt. N. P. Rep.* 458. This was an action of debt upon the stat. 18 *G.* 2. *c.* 20. brought against the defendant, to recover a penalty of 100*l.* for acting as a justice of peace in the county of *York*, not being duly qualified by law. It appeared that the defendant had taken the benefit of an insolvent act, in *Jan.* 1814, subsequent to which time he had repeatedly acted as a magistrate, without acquiring any new qualification. He had qualified originally in 1802. No notice of this action had been given by the plaintiff to the defendant.—For the defendant it was contended, that the plaintiff was bound to prove a notice of action according to the provisions of the stat. 24 *G.* 2. *c.* 44. The defendant had acted as a magistrate, and was therefore entitled to the privileges and protection of that office: but *Wood* B. ruled, that he was not within the act. The question to be tried is, *was* he a magistrate? It was then contended, that if they were enabled to shew when Mr. *Horton* was discharged from prison, that there was a fair probability that his estate would pay his debts, and leave a sufficient surplus to uphold the qualification of a magistrate, the present action would not lie. A legal estate in land was not necessary; an estate in equity was sufficient. They therefore proposed to shew, that there would be a surplus of 100*l.* *per annum* after paying Mr. *Horton*'s debts. *Wood* B. All the defendant's estate is now vested in the clerk of the peace. His legal and equitable rights are equally transferrable to his creditors. We cannot take an account here, and declare a surplus in his favour. The defendant may ultimately be entitled to qualify; but, at present, he has not the title which the act of parliament requires.—Verdict for plaintiff.

The acts of a justice of the peace, who has not duly qualified, are not absolutely void, and therefore, persons seizing goods, under a warrant of distress signed by a justice who had not taken the oaths at the general sessions, nor delivered in the certificate required, are not trespassers.

The Company of Proprietors of the Margate Pier v. *George Hannam, Esq., James Dyson, Esq. and two others.* *M.* 60 *Geo.* 3. 3 *B.* & *A.* 266. Trespass for taking goods: Plea, Not guilty. There were two questions in the case: first, whether the plaintiffs were liable to be rated to the poor. The court decided that they were; and their judgment was grounded on the special provisions of the acts of parliament creating the company, and the peculiar nature of the property. It is, therefore, unnecessary to state that part of the case. The second question was, whether the warrant of distress, signed by the defendants, *Hannam* and *Dyson*, was legal; and that depended upon the question, whether the acts done by *Dyson*, as a justice for the cinque ports, were valid, he having omitted to deliver in a certificate, or to take the oath at the general sessions in the cinque ports, as required by the acts of parliament. The facts of the case, and the clauses of the acts of parlament applicable to the question, are fully stated by the Ld. C. J., in delivering the judgment of the Court.—The case having been argued, *Cur. adv. vult.* Afterwards *Abbott* C. J delivered the judgment of the Court. This was an action of trespass, brought for levying certain poor-rates for the parish of *St. John the Baptist*, in the *Isle of Thanet*. There had

been three rates, all regularly made and published. Two of the three had been duly allowed by two of the justices of the cinque ports. The third was allowed by the defendants, *Hannam* and *Dyson*, acting as such justices: the warrants of distress had been issued by these defendants, and executed by the other two defendants, one of whom was an overseer of the poor, and the other a constable of the parish. Copies of the warrants had been demanded, and notice of the action given. A case was reserved at the trial of the cause, upon two questions; first, Whether the plaintiffs were liable to be rated for the relief of the poor; secondly, whether the acts of the defendant, *Dyson*, as a justice of the peace for the liberties of the cinque ports, in the matter in question, were valid or not. The case was argued before us upon the first question at *Serjeant's-Inn Hall*, and we then gave our opinion in the affirmative, *viz.* that the plaintiffs were liable to be rated for the relief of the poor.—The second question was spoken to at the same time, and afterwards more fully argued here during the present term. It arises in this manner: By stat. 51 *Geo.* 3. *c.* 36. H. M. is authorised to issue a commission, to be directed to certain persons to be therein named, constituting them to be justices of the peace within and throughout the liberties of the cinque ports, and investing them with the same power and authority as belongs to any mayor, bailiff, or jurat, to exercise within the liberties of the town whereof he is mayor, bailiff, or jurat. "And from and after, (these are the words of the statute,) such commission or commissions shall have so issued, all persons and every person named in any such commission or commissions, shall be and they and each of them is and are hereby declared to be justices and a justice of the peace within and throughout the liberties of the cinque ports, and invested with the same power and authority within and throughout the same," as belongs to any mayor, bailiff, or jurat within his port or town. By the third section of this act it is provided and enacted, "that no person or persons to be named in such commission shall be thereby, or by this act, authorised to act as a justice of the peace, unless he shall have such qualification as will authorise him to act for a county, and unless he shall have taken and subscribed the oaths, and delivered in at some general sessions to be holden in some one of the cinque ports, the certificate respectively required to be taken and subscribed and delivered in by persons qualifying themselves to act for counties." The defendant, *Dyson*, had taken the oaths under a writ of *dedimus potestatem*, but he had omitted to deliver a certificate, or take any oath at any general sessions in any one of the cinque ports; and upon this omission the objection to the validity of his acts as a justice was grounded.—We are of opinion, that, notwithstanding this omission, his acts as a justice, in the matters in question, were valid. An objection of the same nature may happen to arise in some cases of persons acting as justices for counties at large; and this gives a general importance to the question. By stat. 18 *Geo.* 2. *c.* 20. it is enacted, "that no person shall be capable of being a justice, or acting as such for any county, without the qualification by estate therein mentioned, and who shall not take, at some general or quarter sessions, the oath therein prescribed." And by the second section, "Any person who shall act as a justice without having taken the oath or

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51 G. 3. c. 36.

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without being qualified, shall forfeit 100*l*." It is obvious that if the act of the justice, issuing a warrant, be invalid on the ground of such an objection as the present, all persons who act in the execution of the warrant will act without any authority: a constable who arrests, and a gaoler who receives a felon, will each be a trespasser; resistance to them will be lawful; every thing done by either of them will be unlawful; and a constable, or persons aiding him may, in some possible instance, become amenable even to a charge of murder, for acting under an authority, which they reasonably considered themselves bound to obey, and of the invalidity whereof they are wholly ignorant. An exposition of these statutes, pregnant with so much inconvenience, ought not to be made, if they will admit of any other reasonable construction. "Acts of parliament," says Ld. *Coke*, "are to be so construed, as no man that is innocent, or free from injury or wrong, be by a literal construction punished or endamaged." We think these acts do most reasonably admit of another construction. We think the *restraining* clauses are only prohibitory upon the justice. By the particular act upon which this question has arisen, Mr. *Dyson*, having been named in the commission, is declared to be a justice, and invested with power and authority as such. The proper effect, therefore, as it seems to us, of the third section, is only to make it unlawful in him to act as such; but not to make his acts invalid.—Many persons, acting as justices of the peace in virtue of offices in corporations, have been ousted of their offices from some defect in their election or appointment; and although all acts, properly corporate and official, done by such persons, are void, yet acts done by them as justices, or in a judicial character, have in no instance been thought invalid. This distinction is well known. The interest of the public at large requires that the acts done should be sustained: sufficient effect is given to the statutes by considering them as penal upon the party acting. No pecuniary penalty, indeed, is imposed by the stat. 51 *Geo.* 3.; but a justice acting contrary to its prohibitory clause will subject himself, if not to the penalty of the 18 *Geo.* 2.; yet certainly to a prosecution by indictment. For these reasons we think there must be a judgment of nonsuit.

§ IV. Fees to be taken by Justices of the Peace.

In the oath of office above mentioned are these words; *And that you take nothing for your office of justice of the peace to be done but of the king, and fees accustomed, and costs limited by statute.*

And by statute their fees in many cases are limited and ascertained; as is noted under their respective titles where they occur throughout this work.

26 G. 2. c. 14. Justices to settle a table of fees.

And for the rest, it is provided generally by stat. 26 *G.* 2 *c.* 14. § 1., that the justices of peace throughout *England*, at their respective general quarter sessions next after 24th *June*, 1753, shall make a table of the fees to be taken by clerks to justices of peace within the county, city, or division for which such sessions are held; and such respective tables of fees being approved by the justices of peace at the next succeeding general quarter sessions for such county, &c. with such alterations as such sessions think proper, shall be laid before the judges at the next assizes, or at the great sessions for *Wales*, and the counties palatine of *Chester*,

Lancaster, and *Durham*, for the respective county, &c., who shall confirm such respective tables of fees as settled by such justices, or with such alteration as to such judges appear reasonable; and such justices in their respective quarter sessions may, from time to time, make any other table of fees to be taken instead of the fees contained in the table so confirmed, and after the same are approved by the justices of peace at the next succeeding general quarter sessions, may lay such new table before the judges at the next assizes, or at the great sessions for *Wales*, and such counties palatine, who shall ratify the same if they think fit; but no table of fees to be made by such justices shall be valid until confirmed by such judges.

26 G. 2. c. 14. To be ratified by judges of assize. Justices may make new tables, to be ratified in same manner.

By stat. 27 *G.* 2. *c.* 16. § 4. In *Middlesex* the like table shall be confirmed by the two lords chief justices, and the lord chief baron, or any two of them.

27 G. 2. c. 16. In Middlesex.

§ 2. If at any time after three calendar months from the time that such table of fees is made and ratified, any clerk to any justice of peace, or any person acting as such, shall, under pretence of any thing done by such justice in the execution of his office, or done by such clerk, demand or receive any other or greater fee than is so ascertained and confirmed, he shall forfeit 20*l.* to any person who shall sue for the same by action of debt, &c. or information in any court of record at *Westminster*, wherein no essoign, &c. and only one imparlance shall be allowed.

26 G. 2. c. 14. Clerks taking other fees. Penalty.

§ 3. All the tables of fees so made and confirmed shall be deposited with the clerk of the peace for the respective county, city, or other division; and who shall cause copies of such tables to be kept constantly in a conspicuous part of the room where the general or quarter sessions are held, under pain of forfeiting 10*l.* to be recovered as in § 2 directed.

Tables to be deposited with clerks of the peace.

§ 4. All suits brought by virtue of this act shall be brought before the end of three months after the offence committed.

Limitation of actions.

§ V. Some general Directions relating to Justices of the Peace, not falling under any particular Title of this Book.

Regularly, justices of the peace ought not to execute their office in their own case, but cause the offenders to be convened or carried before other justices, or desire the aid of some other justice being present. *Dalt. c.* 173.

Justice not to act in his own case.

By *Holt* Ch. J. The mayor of *Hereford* was laid by the heels, for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he by the charter was sole judge of the court. 1 *Salk.* 396.

The case of *Foxham* tithing in the county of *Wilts.* 2 *Salk.* 607. A justice of the peace was surveyor of the highways, and a matter which concerned his office coming in question at the sessions, he joined in making the order, and his name was put in the caption. By *Holt* Ch. J. It ought not to be; as if an action be brought by my Lord Chief Justice *Trevor* in the court of Common Pleas, it must be before *Edward Neville*, knight, and his associates, and not before *Thomas Trevor*, *&c.*; and it was quashed.

Nor at sessions where a matter which concerns any office he may hold come in question.

Great Chart v. *Kennington*, *Burr. S. C.* 194. An order of removal of a poor person from *Great Chart* to *Kennington* was

Orders of removal.

quashed, because one of the justices who made the order was an inhabitant of *Great Chart* at the time, and charged to the poor rate there. And by the court, no rule of law or reason is more established, than that a judge ought to stand disinterested.

Justice, being assaulted or abused to his face.

Yet in some cases, if the justice shall act in his own cause, it seemeth to be justifiable; as when a justice shall be assaulted, or (in the doing his office especially) shall be abused to his face, and no other justice present with him; then it seems he may commit such offender until he shall find sureties for the peace or good behaviour, as the case shall require: But if any other justice be present, it were fitting to desire his aid. *Dalt. c.* 173. 1 *Str.* 420, 421.

16 G.2. c.18. Justice, although rated, may act in several parochial matters.

And by stat. 16 *G*.2. *c*.18. § 1. (which seems to have been made in consequence of the determination in the case of *Great Chart* and *Kennington* aforesaid.) Every justice or justices of the peace for any county, riding, city, liberty, franchise, borough, or town corporate within their respective jurisdictions, may make, do, and execute all things appertaining to their office, so far as the same relates to the laws for the relief, maintenance, and settlement of the poor; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding that they are rated to, or chargeable with the rates within any place affected by such their acts.

But not in appeals.

§ 3. Provided that this shall not empower any justice for any county or riding at large to act in the determination of any appeal to the quarter sessions of such county, &c. from any order, matter, or thing, relating to any such parish, township, or place where such justice is so charged or chargeable.

Order of removal.

In the case of *Rex* v. *Yarpole*, 4 *T. R.* 71. it was determined that on an appeal to the sessions against an order of removal, those justices who are rated to the relief of the poor in either of the contending parishes have not a right to vote.

Ought not to act in his own cause.

And as it is unjust in many cases for the magistrate to act in his own cause, so it is also imprudent: To which purpose the advice of Ld. *Coke* (1 *Inst.* 377.) is applicable, who (upon the occasion of mentioning a certain judge, who made a settlement of his estate which was void in law; and who also brought an action in his own name, which all the other judges, of his own shewing in the count, were of opinion did not lie,) makes this observation; that it is not safe for any man (be he never so learned) to be of counsel with himself in his own cause, but to take advice of other great and learned men; and the reason he gives is, for that men are generally more foolish in their own concerns than in those of other people.

Acting without authority.

If a justice exceed his authority in granting a warrant, yet the officer must execute it, and is indemnified for so doing; but if it be a case wherein he hath no jurisdiction, or in a matter whereof he hath no cognizance, the officer ought not to execute such warrant; so that the officer is bound to take notice of the authority and jurisdiction of the justice. *Cro. Car.* 394. 10 *Rep.* 176. *Milton* v. *Green*, 5 *East.* 233. But see stat. 24 *G.* 2. *c.* 44. § 6. *post*, p. 170.

Thus if a justice send a warrant to a constable to take up one for slander, or the like, the justice hath no jurisdiction in such

cases, and the constable ought to refuse the execution of it. *Wood's Inst. b.* 1. *c.* 7.

Where an act of parliament gives power to two justices finally to hear and determine any offence, or when they are to do any other *judicial act*, as making an order of bastardy (*a*), adjudging the settlement of a pauper (*b*), appointing overseers of the poor (*c*), allowing the indentures of a parish apprentice (*d*), and such like, it is necessary that they should be both together to hear the evidence and to consult together.

Where two justices are required to do any *judicial* act, they ought to be together.

Pancras v. *Rumbald*, 1 *Str.* 6. There was an order of two justices for the removal of a poor person from the parish of *Pancras* to *Rumbald*. Within three days the justices reciting that they were surprised, superseded it, and commanded the churchwardens to return the former order to be cancelled. It was insisted, that the justices could not issue such a *supersedeas*. But by the court, the *supersedeas* is well sent by the justices, and to prevent the charge of an appeal. And the last order was confirmed.

Superseding an order of removal.

In respect to granting a *supersedeas* in bailable offences; Mr. J. *Ashhurst* said, that the legality of it is very doubtful; and that at any rate, it cannot hold where the party is convicted in the first instance as a rogue and vagabond and committed in *execution*, for there he is clearly not bailable. 2 *T. R.* 195.

Supersedeas in bailable offences.

In summary convictions the party ought to be heard, and for that purpose ought to be summoned in fact; and if the justice proceed against a person without summoning him, it would be a misdemeanor in him, for which an information would lie. 1 *Salk.* 181. 2 Ld. *Raym.* 1407. 2 *Str.* 678.

Not to condemn any person unheard.

But before an information is granted, the court will first require that the conviction be removed before them. 2 *Str.* 915.

Rex v. *Harwood*, 2 *Str.* 1088. 3 *Burr.* 1716. 1786. The defendant, being a justice of the peace, was convicted on an information, for a conviction by him made of an alehouse keeper, who was never summoned or heard. It was moved, as of course, to dispense with his appearance. This was opposed, unless there was some reason given, or affidavit made. And upon debate the Court resolved it was not of course; and the defendant afterwards appeared in person.

When a justice is convicted on an information, he must appear in person.

Rex v. *Todd and others*, 1 *Str.* 530. By stat. 6 *G. c.* 21. the justices of the peace have a jurisdiction given to them in some cases to receive an information, and make their determination, upon a seizure of brandy. Upon information exhibited by the officer of the customs, the fact appeared not to warrant the seizure: but the justice, in favour of the officer, refused to dismiss the information, so that the owners might have their brandy again. And now a *mandamus* was moved for, to compel him to determine the matter, which was granted accordingly.

Refusing to proceed in a cause depending before them.

Rex v. *Newton and others*, 1 *Str.* 413. By stat. 1 *G. c.* 13. § 11. it is enacted, that two justices may summon any person to take the oaths before them; and if they do not appear, then on oath of serving such summons, the justices are to certify the same to the

(*a*) *Billings* v. *Prinn*, 2 *Blac. Rep.* 1017.
(*b*) *R.* v. *Coln St. Aldwin's*, *Burr. S. C.* 136.
(*c*) *R.* v. *Forrest*, 3 *T. R.* 38. *and* 2 *East*, 244.
(*d*) *R.* v. *Hamstall Ridware*, 3 *T. R.* 380.

See Vol. IV. *tit.* Poor; § IV. 6. *Battye* v. *Gresley*, 8 *East*.

quarter sessions, where if the party so summoned doth not appear to take the oaths he shall stand convicted of recusancy. The defendants were justices of the peace, and issued their summons accordingly; but coming afterwards to understand that the party was a gentleman of fashion, and not suspected to be against the government, lest a transaction of this nature should be an imputation upon him, they refused to give the prosecutor his oath of the service of such summons, that the matter might go no further. And upon motion for an *information* against them, the court declared that the justices had no discretionary power to refuse to put the act in execution, and therefore granted an information against them.

Authority to appear on the face of their orders.

Where a special authority is given to justices out of sessions, it ought to appear in their orders that such authority was exactly pursued. 2 *Salk.* 475. 5 *Burr.* 2686.

To make a record of their proceedings.

In all cases where justices may hear and determine out of sessions (*viz.* on their own view, or confession, or oath of witnesses) the justices ought to make a record (*a*) in writing under their hands of all the matters and proofs; which record notwithstanding in many cases they may keep by them. *Dalt. c.* 115. See Vol. I. *tit.* Examination.

But now see stats. 3 *G.* 4. *c.* 46. and 4 *G.* 4. *c.* 37. Vol. II. *tit.* Fines.

To estreat fines.

If upon such conviction, the offender is to be fined to the king, then the justices are to estreat such fine, and to send the estreat into the exchequer, whereby the barons of the exchequer may cause the said fine or forfeiture to be levied for the king's use. *Dalt. c.* 115.

And in all cases of convictions, the justices should return the convictions to the next sessions.

Whether a justice may issue his warrant for offences cognizable only in the sessions.

Lord *Hale* says (contrary to the opinion of Lord *Coke*), that the justices out of sessions may issue their warrant for apprehending persons charged of crimes without the cognizance of the sessions, and bind them over to appear at the sessions, although the offender be not yet indicted. 1 *Hale*, 579.

But in another place he says, this seemeth doubtful; and that one thing which seemeth to make against it is, that in most cases of this nature, though the party were indicted, or an information preferred, yet a *capias* was not the first process, but a *venire facias*, and *distringas*. 2 *Hale*, 113.

And Mr. *Hawkins* on this point saith thus: It seems that anciently no one justice could legally make out a warrant for an offence against a penal statute, or other misdemeanor, cognizable only by a sessions of two or more justices; for that one single justice hath no jurisdiction of such offence, and regularly those only who have jurisdiction over a cause can award process concerning it; yet the long, constant, universal, and uncontrouled practice of justices of the peace, seems to have altered the law in this particular, and to have given them an authority in relation to such arrests, not now to be disputed. 2 *Haw. c.* 13. § 16.

(*a*) Generally speaking all records ought to be on parchment, but there does not appear to be any positive law to this effect, and, therefore, they are good if written on paper. *Vide* Vol. V. p. 7. and 1 *Inst.* 260.

However, as the authority of justices of the peace is by the statute law, and no statute hath expressly given to them such power (unless in special cases, which operate against, rather than establish a general power), it seemeth best in ordinary cases, and more consonant to the practice of the superior courts, to issue a summons against the offender, and not a warrant, in the first instance; unless in cases of felony, or where the offender in other respects is to suffer corporal punishment. Where an act of parliament gives a justice jurisdiction over an offence, it *impliedly* gives him a power to make out a warrant and bring before him any person charged with such offence. See 2 *Haw. c.* 13. § 15. 12 *Rep.* 131. *b.* Q. v. *Simpson,* 10 *Mod.* 248. See the instance, *Bane* v. *Methuen,* 2 *Bingh. R.* 63. Vol. V. *tit.* Trespass. See *R.* v. *Fulham* and *Martyr,* 13 *East,* 55. Vol. I. p. 321.

Where *summons,* and not a *warrant,* proper.

By stat. 45 *G.* 3. *c.* 48. § 3. All justices of the peace (being duly qualified) may act as commissioners of the land tax, though not specially *named* as commissioners in the act.

45 G. 3. c. 48. All justices commissioners of land-tax.

And by stat. 3 *G.* 4. *c.* 126. § 61. All justices acting for the county through which any turnpike road passes, may act as trustees, with the same powers as if named in or elected under the local act. And by stat. 4 *G.* 4. *c.* 95. § 34. the necessity for justices to qualify previously to acting as such trustees is dispensed with.

3 G. 4. c. 126. 4 G. 4. c. 95. Justices may act as trustees of turnpike roads, and need not qualify.

An attorney has no right to interfere with the duties of a magistrate in his own justice room; and therefore where a criminal information was moved for against two justices, on the ground of their having deprived the defendant of legal assistance, by excluding his attorney from the justice room, (no corrupt motive being imputed to the magistrates,) the court of K. B. refused to interfere. *Bayley* J. said, it might be a different thing where counsel are employed, but an attorney in all events has no right to be present. *R.* v. *A.* & *B. Just. of Staffordshire.* 1 *Chitt. Rep.* 217.

An attorney has no right to be present on the hearing of informations before magistrates.

Rex v. *Borron, Esq. H.* 60 *Geo.* 3. and 1 *Geo.* 4. 3 *B.* & *A.* 432. —*Denman,* in last *Michaelmas* term, obtained a rule *nisi,* for a criminal information against the defendant, a magistrate for the county of *Lancaster.* On the last day of that term, *J. Williams* shewed cause against the rule, and *Denman, Chitty,* and *Hill* were heard in support of it. The cirumstances of the case were so fully stated by the Lord C. J. in pronouncing the judgment of the court, in the course of this term, that it has been thought proper to omit them here. *Cur. adv. vult.* — *Abbott* C. J. In the course of the last term, a rule was granted, on the application of Mr. *Charles Pearson,* an attorney of the city of *London,* calling upon *John Arthur Borron,* esq., one of H. M.'s justices of the peace of the county of *Lancaster,* to shew cause why a criminal information should not be exhibited against him, for refusing to take the examination of two persons, of the names of *Thomas Richardson* and *Robert Rimmer,* on a charge against a third person, of having feloniously cut and wounded the said *Thomas Richardson,* on the 16th of *August* last, at *Manchester.* Mr. *Borron* is a justice acting for the *Warrington* division, and not for the division of *Manchester,* wherein the offence was alleged to have been committed. Cause was shewn against the rule, on the last day of the term; and it appearing, upon the arguments of counsel, that an important question was supposed to be raised, regarding the

Rex v. Borron. Where a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found on investigation to be strictly right or not, but whether it proceeded from an unjust, oppressive, or corrupt motive (amongst which fear and favour are generally included,) or from mistake or error only. In the latter case, the court will not grant the rule. Secondly

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in the investigation of a charge of felony before a magistrate, an attorney is only as a matter of courtesy permitted, but has no right to be present; nor can he comment on the evidence so as to apply the law to it, unless he be requested by the magistrate to give his opinion and advice upon the case.

execution of the office of a justice of the peace on the one hand, and the right of the subject to enquiry and investigation on the other, we thought it expedient to peruse the affidavits attentively, before we pronounced our rule in the case, which could not, without great inconvenience, be done on the last day of the term. We have, accordingly, perused the affidavits attentively, during the late vacation; and, upon such perusal, it appears to us, that that the application for a criminal information is not sustained. The application is made against a gentleman, who is one of that class of persons to whom this country is under as great obligation as this or any other nation is, or ever was, to any members of its community;—I speak of the gentlemen residing in the different parts of *England*, who act in the execution of H. M.'s commission of the peace, and who gratuitously devote a great portion of their time, and bestow much valuable, but often thankless labour, in the administration of many branches of the law; and among others, in most of the early, and in many of the mature stages of our criminal jurisprudence. In this most valuable class, many persons are found who possess a sound knowledge of the law, united with the most useful and extensive practical information. They are called upon, in many cases of a difficult, and in many of a delicate kind, and are, in general, addressed by those who apply to them with the respect that is due to their station and character. The present case affords an unusual, if not a solitary instance of address, in the language of demand and menace. They are, indeed, like every other subject of this kingdom, answerable to the law for the faithful and upright discharge of their trust and duties. But whenever they have been challenged upon this head, either by way of indictment, or application to this court for a criminal information, the question has always been, not whether the act done might, upon full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive, or corrupt motive, under which description fear and favour may generally be included, or from mistake or error. In the former case, alone, they have become the objects of punishment. To punish as a criminal any person who, in the gratuitous exercise of a public trust may have fallen into error or mistake belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom. Upon these principles, the present application to this court is to be decided by us. But even if it were to be decided upon a more strict and rigid rule, we should not be able to find any error or mistake in the conduct of Mr. *Borron*, except, perhaps, that of having shewn too much attention to an application made to him in a most improper and unbecoming manner. Mr. *Charles Pearson*, of *London*, the person now applying to this court, informs us, by his affidavit, that he was retained, on the 23d of *October* last, by *Thomas Richardson*, of *Manchester*, to bring before the proper tribunal a charge which he had to prefer against an individual, whose surname is mentioned, for having feloniously, &c. cut and wounded the said *Thomas Richardson*, on the 16th *August*, at *Manchester*. He then proceeds to mention the facts of the case, as communicated to him by *Thomas Richardson*, all the material parts whereof are also mentioned in the affidavit of *Thomas Richardson*, and such of

them as are said to have been witnessed by *Robert Rimmer*, are mentioned in his affidavit also. Affidavits, to be sworn by those two persons, were prepared by *Pearson*, after his return to *London*, and sent down by him to *Manchester*; and their affidavits, now before the court, appear to contain many expressions not likely to be used by persons of their situation in life. These affidavits present two facts very important to the present inquiry: first, that the name of the person, by whom the supposed felony was committed was unknown to *Richardson* and *Rimmer* at the time, and not discovered until after the assizes, which had intervened between the subject of complaint and the application to Mr. *Borron*; secondly, that the attack upon *Richardson* was made wantonly and wilfully, after the meeting at *Manchester* had been dispersed, by the authority of the justices acting in that district, when *Richardson* was going from the place of meeting peaceably, and alone; at a time, therefore, and under circumstances, in which those who had ordered the dispersion of the meeting, whether such order had been properly or improperly given, could not be responsible for the act of the supposed offender. *Pearson* further states a measure adopted by himself, for the purpose of satisfying himself that *Richardson* had not mistaken the person accused, in which he appears to have conducted himself with becoming caution. The first of these facts, namely, the discovery of the name of the offender, after the assizes, does not appear to have been communicated to Mr. *Borron*. According to the representation made to him, the supposed offender was living at *Manchester*, not having fled, nor being likely or expected to fly from the calls of justice. The latter of these facts, namely, the time and circumstances of the alleged offence, were, at the first interview, mentioned to Mr. *Borron*, but his attention was not then, or afterwards, called to them as it ought to have been, in order to remove the ground of his disinclination to interfere, which was manifested at the first meeting. On the contrary, Mr. *Borron* was informed, as the reason for applying to him to exercise his authority on a matter arising in a part of the country in which he did not reside, and for which he had never acted, that the justices acting for the *Manchester* division had refused to enquire into some similar charges against the yeomanry, alleging that they might be, in some sense, considered as connected with the proceedings of that day, and as such, so implicated, as to render it improper for them to take cognizance of the charges. And it is obvious to us, and was apparent at the time, that Mr. *Borron*'s reluctance to act on the occasion was grounded on the consideration, that his brother justices were in some way connected with the subject of complaint. It was the duty of an attorney to have pointed out the distinction. For such purposes, and perhaps for such alone, can the presence of an attorney be useful on such an occasion. It appears further, by the affidavits on each side, that Mr. *Borron* desired a day to consider of the matter, and before his final refusal, consulted another justice of the county, who agreed in opinion with him as to the conduct proper for him to adopt; and the fact of such consultation at least, if not the opinion of the other justice, was made known to *Pearson*. The reason of Mr. *Borron*'s refusal to act, as furnished to the court by the affidavit of *Pearson*, was, that he declined any official inter-

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redress." This was not an occasion on which a justice of the peace was to act as a ministerial officer; on the contrary, he was to exercise a judicial discretion on a subject important in itself, and rendered peculiarly delicate by the situation in which he stood. Whatever respect there might be in the manner of the address, its language was unfit and unbecoming. Yet was language of the same threatening import addressed the next day in a prepared written notice. The paper delivered to Mr. *Borron*, when he returned, after consulting Mr. *Lyon*, and before he had expressed his decision, concludes in these words; "and I do hereby give you notice, that if you refuse or neglect to hear such evidence, and to take such examination, I shall apply to the court of K. B. on the first day of next *Michaelmas* term for a criminal information against you, the said *John Arthur Borron*, for having for fear or favour refused to hear and examine witnesses touching and concerning a felony committed within the said county of *Lancaster*, of which you are one of the justices, as aforesaid." Little of that high-minded and honourable sentiment which usually influences the gentlemen who act in the commission of the peace, could be expected from one who should yield to such a threat. And we should be wanting in the discharge of our duty, if we forbore to express our disapprobation of such language. It is necessary only to add further, that as the application to this court appears to be the act of Mr. *Charles Pearson*, the costs of the rule must be paid by him. Rule discharged with costs. Rex v. Borron.

Cox v. Coleridge. A prisoner, when examined before magistrates under a charge of felony, is not entitled, as of right, to have a person skilled in the law present as an advocate on his behalf, it being a preliminary investigation only, and not conclusive upon him.

Cox, *gent. one, &c. v.* Coleridge, *esq. and another. M.* 1822. 1 *B. & C.* 37. Trespass for assaulting plaintiff, and seizing and laying hold of him and forcing him to go out of a certain room in a certain inn in *Ottery St. Mary*, in the county of *Devon*, whereby he was hurt and prevented from performing and transacting his necessary business there. There was also a count for a common assault. Plea 1st, not guilty, on which issue was joined; 2dly, a justification, that defendants were and are two of the justices of the king for the county of *Devon;* and that so being such justices at the time when, &c., they were assembled in the said room within the said county, and within their jurisdiction, to take the information upon oath of the prosecutor, and the several witnesses touching and concerning a certain felony, before then charged to have been committed by one *G. B.* within the said county and within their jurisdiction, and upon which charge the said *G. B.* was then in custody before them, and to examine the said *G. B.*, being the party accused, touching the same, and further to do and perform there such things as should to them seem proper as such justices. And that defendants being so assembled in the said room as such justices, and for the purposes aforesaid, the plaintiff afterwards and before the time when, &c., not having been summoned before them as a witness touching the matter then in examination, nor being charged as a party concerned in the same, nor coming before them to testify any knowledge concerning the same, with force and arms wrongfully broke and entered into the said room, and intruded himself upon the defendants so assembled therein as aforesaid, and for the purpose aforesaid. The plea then averred a request by the defendants to the plaintiff to leave the room, and that the plaintiff refused to obey it,

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and continued there in contempt of the defendants, as such justices, and to the disturbance and violation of due order and decency in the administration of justice, and to the hindrance thereof; whereupon the defendants gently laid their hands upon him, &c. The plaintiff in his replication to the above justification stated, that before and at the time when, &c. he was and is one of the attornies of the King's Bench, and well skilled in the laws, statutes, and customs of this realm; and that the said *G. B.*, before the supposed breaking, entry, and intrusion in the plea mentioned, to wit, on, &c., being an illiterate person and unskilled in the laws and customs of this realm, applied to and requested and retained the said plaintiff as such attorney so skilled as aforesaid, to accompany him, the said *G. B.* before the said defendants as such justices; and to assist him, the said *G. B.*, with his, the said plaintiff's counsel, skill, suggestions, and advice, in making his, the said *G. B.*'s defence before them, the said defendants, as such justices, to the said charge. Whereupon the said plaintiff, having thereupon, as such attorney so skilled as aforesaid, then and there acceded to the said request, and accepted the said retainer for the said *G. B.*, did, as such attorney so skilled as aforesaid, a little before the said time when, &c. for and on the behalf of the said *G. B.*, and at his request, and upon his retainer as aforesaid, accompany the said *G. B.* before defendants, as such justices as aforesaid; and in so doing, did necessarily enter into the said room in which, &c. for the purpose of assisting and advising the said *G. B.* touching the premises as aforesaid; and did thereupon then and there inform and give notice to the said defendants, as such justices as aforesaid, that he the said plaintiff then was such attorney so skilled as aforesaid; and that he the said plaintiff had been and was so applied to, requested and retained as aforesaid; and that he, the said plaintiff, had then and there entered the said room for the purpose aforesaid, and continued therein from thence until the said defendants afterwards, to wit, at the same time when, &c., of their own wrong, committed the said several trespasses, &c. Demurrer and joinder.—After very full arguments by *Coleridge* in support of the demurrer, and *Denman* contra,—*Per Abbott* C. J. The plaintiff, it is clear, cannot be entitled to succeed, unless he can establish the position, that every person accused before a magistrate, whether of felony or misdemeanour, has a right to have some person of skill in the law to attend on his behalf. The case cannot be put on the nature of the plaintiff's character as an attorney, for it is no part of the proper duty of an attorney to attend in such cases. He must attend only in the character of an advocate. Now if such a right as this really existed, one would expect to find it recognised in some of our books of authority. It is true, that in practice magistrates do permit, on many occasions, the presence of advocates for the parties accused. Such a practice is undoubtedly very convenient where doubts arise on matters of law, respecting which the magistrates (who must, however, be considered by the court as competent to judge in such cases) may wish to have the benefit of legal assistance. But it does not follow, from the existence of such a practice, that there is any such right as that now claimed. The right, if it existed, might be productive of great inconvenience. It would be difficult to distinguish between the cases of an offence committed by one, and that of one committed by a

number of individuals. And yet, in the latter case, if an attorney has a right to attend where one out of a gang is examined, he may obtain and convey information to the rest; the effect of which might be to frustrate the justice of the case. Besides, it must follow that if the party accused has this right, it cannot be denied to the accuser. The effect of that would be, that great expence and inconvenience would follow, and great prejudice to the prisoner in the majority of cases; as it would be much more likely to happen that a prosecution should be attended by counsel than a defence, and the magistrate would be probably as much influenced, if at all, by an advocate for the one side as the other. The nature of the proceeding also shews, that this cannot be properly demanded as a right. What is it? It is only a preliminary enquiry, whether there be sufficient ground to commit the prisoner for trial. The proceeding before the grand jury is precisely of the same nature, and it would be difficult, if the right exists in the present case, to deny it in that. This being only a preliminary enquiry, and not a trial, makes, in my mind, all the difference. At a trial before a magistrate it may perhaps be different. But to establish the right now claimed would, as it seems to me, be productive of great inconvenience. By adhering to the present practice we shall prevent this. It is far better and safer to leave it to the discretion of the magistrates in each particular case, whether they will admit or exclude an advocate for the accused party. I think, therefore, that our judgment should be for the defendants. —*Bayley* J. This is not the case of a summary conviction, but of an accusation of felony, and the decision of the magistrate is not conclusive. Whenever the former case shall arise, I wish not to be considered as bound by the *obiter dictum* which I am reported to have used in the case cited, *viz.* of *R.* v. *Justices of Staffordshire.* (1 *Chit. R.* 218. *ante*, p. 157.) I am open to hear that point argued whenever it becomes necessary. This question is, however, quite different; and my present opinion does not go upon any distinction between the character of an attorney and a counsel, for it appears to me that neither the one or the other has a right to attend in such cases as the present, either on behalf of the prosecution or for the prisoner. As to the passages which have been cited from *Dalton* (*a*), I am by no means satisfied with their authority; for I think that a magistrate is clearly bound, in the exercise of a sound discretion, not to commit any one, unless a *primâ facie* case is made out against him by witnesses entitled to a reasonable degree of credit. It seems to me that it is only a privilege to the accused to be allowed an adviser, and not a right; but it may be very useful for a magistrate to grant it in many cases, and it is

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(*a*) *Viz.* c. 164. p. 407. "where any felony is committed, and one brought before a justice of peace on suspicion thereof, the justice ought to commit or require bail, though it shall appear to him that the prisoner is not guilty thereof; for it is not fit that a man once arrested and charged with felony, or suspicion thereof, should be delivered, on any man's discretion, without farther trial." For this *Dalton* quotes *Crompton*, 34. and *Lambard*, 229. And in p. 408., after enumerating persons who are not to be considered as credible witnesses, he adds, "But if one be brought before a justice of peace upon suspicion of felony, although the information against the prisoner shall be by such witnesses, yet it seemeth safest for the justice of the peace to take their information for the king, and to bind them over to give evidence, &c. and to commit the party suspected, and upon the trial to inform the justices of gaol delivery concerning their credit." See 1 *B. & C.* 42, 43.

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to be presumed that he will do so on all proper occasions.—*Holroyd* J. I am of the same opinion, that the right claimed cannot legally be supported. A magistrate, in cases like the present, does not act as a court of justice; he is only an officer deputed by the law to enter into a preliminary enquiry; and the law which casts upon him that jurisdiction, presumes that he will do his duty in enquiring whether the party ought to be committed or not. The claim now set up must be to have any person skilled in the law present at the enquiry; for the plaintiff cannot rely upon his legal character of an attorney. This claim, therefore, must be general; that any person skilled in the law has a right to attend, or it cannot be supported at all. Then can such a general claim be supported? There is no authority in the books for it, nor is it agreeable to the usual practice in such cases.—*Best* J. In the *King* v. *Borron*, this court declared that an attorney has no right to be present at an enquiry before a magistrate on a charge of felony. This right of an attorney was not the principal point then under our consideration, and I therefore should not feel myself precluded by the authority of that case from again examining the question. I cannot discover any ground on which an attorney can claim a right to attend an examination of this sort, either for the prosecution or the prisoner. What authority is there to support such a right? We have been referred to none, and none can be found. It cannot be contended, that the common law acknowledges any such right. It is however argued, that the examination of a prisoner by a magistrate, under the statutes of *Ph. & M.*, is a judicial enquiry, and that therefore the prisoner has a right to the assistance of an attorney. But the history of these statutes proves that they were not intended to authorise any such thing. The preamble to the 1 & 2 *Ph. & M. c.* 13. informs us, that the 3 *H.* 7. *c.* 5., which had restrained the power given to one magistrate by 1 *Ric.* 3. *c.* 3. to bail persons accused of felony, had not prevented single magistrates, by sinister means, from setting at large the greatest offenders. This statute, after declaring what offences shall be bailable, and the manner in which the justices shall proceed in admitting them to bail, directs, that before the justices admit to bail, they shall take the examination of the prisoner and the information of them that bring him, and certify them to the justices of gaol delivery. This statute did not, however, require any examination to be taken where the prisoner was committed. I think, therefore, that the principal, if not the only object of the legislature, in passing this law, was to require information to be given to the justices of gaol delivery of the cases in which the magistrates had admitted prisoners to bail, and was not to institute a judicial enquiry. The information thus obtained was found useful on the trials of prisoners, and therefore the 2 & 3 *Ph. & M. c.* 10. extended the provisions of the former act to the cases where the prisoner was committed; and the only object, as it seems to me, was to give assistance to the judge before whom the prisoners were to be tried; and so far was this examination from being a judicial enquiry, which means an enquiry in order to decide on the guilt or innocence of the prisoner, that as the law was administered a few years after the passing these statutes, the justices, even where it appeared that a prisoner was not guilty, were not to discharge him without bail. *Dalton, c.* 164.

The modern practice is indeed different, and is more consistent with law and humanity; and I refer to *Dalton*, only to shew that it could not then have been the opinion of the profession that this examination was any thing like a judicial enquiry. It has been argued that a prisoner under examination should have the assistance of an attorney, to cross-examine the witnesses for the crown, the depositions taken being, in certain cases, evidence against him, on account of his having had an opportunity for cross-examination. But this does not mean cross-examining by counsel or attorney, for that formerly was not allowed to a prisoner even on his trial. *Haw. lib.* 2. *c.* 39. *s.* 1. Besides, if this right exists, there can never be any private examinations, which are very frequent, and often very necessary for the purposes of justice. They are useful, not merely to take down in writing such evidence as is to be offered at the trial, but to find where further evidence may be obtained, and to get at accomplices. These objects would be defeated if any one had a right to be present who could convey intelligence of what had passed. Considering how many desperate offenders might escape justice, and proceed uninterrupted in their guilty career, if this right were allowed, I have no hesitation in saying that it ought not to be admitted, and that we ought to give judgment for the defendants. – Judgment for the defendants.

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Forasmuch as most of the business of a justice of the peace consisteth in the execution of divers statutes, which cannot be sufficiently abridged, but that they will come short of the substance and body thereof, therefore it shall be safest for the justices to have an eye to the statutes at large, and thereby to take their further and better directions for their whole proceedings: For (as Ld. *Coke* observeth, 10 *Rep.* 117. *b.*) abridgments are of good and necessary use to serve as tables, but not to ground any opinion, much less to proceed judicially upon them. *Dalt. c.* 173.

Not to trust to abstracts and abridgments.

In like manner, it is not safe for them to trust altogether to the care and judgment of their clerks, in drawing warrants and other instruments; much less to the skill of parish officers in making copies of orders, and the like; but rather it is advisable to have good printed forms; and instead of copies to be taken upon occasion, to make out duplicates.

Not to trust to clerks and transcribers.

§ VI. Their Indemnity and Protection by the Law in the right Execution of their Office, and their Punishment for the Omission of it.

A justice of the peace is strongly protected by the law in the just execution of his office.

Thus, in the first place, he is not to be slandered or abused, as appears by the following report. *Aston* v. *Blagrave*, 2 *Str.* 617. 2 *Ld. Raym.* 1396. The plaintiff declared that he was a justice of the peace; and that, upon a *colloquium* of him and the execution of his office, the defendant said, *You are a rascal, a villain, and a liar.* After verdict for the plaintiff, it was moved in arrest of judgment, that these words are not *actionable*. It was urged for the plaintiff, There is a great difference between magistrates and common tradesmen: words of the latter must affect them in their particular way of dealing; but any thing that tends to impeach the credit of the former is actionable. And although an *indictment* might not lie for these words, as perhaps not tend-

A justice is not to be slandered or abused.

ing to a breach of the peace, yet nevertheless they are *actionable;* for in many cases words are actionable which are not indictable. After consideration, *Pratt* Ch. J. delivered the opinion of the court, that though *rascal* and *villain* were uncertain, yet being joined with *liar*, and spoken of a justice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff.

An indictment lies for saying of a justice, in the execution of his office, "*you are a rogue and a liar.*"

Rex v. *Revel*, 1 *Str.* 420. The defendant was *indicted*, for saying of *Edward Lawrence*, a justice of the peace, in the execution of his office, *You are a rogue and a liar.* It was moved after verdict for the king, in arrest of judgment, that though the justice might have committed him for the contempt, yet the words are not *indictable*, since it is not to be presumed they would provoke the justice to a breach of the peace, which is the reason why indictments have been held to lie for words. But by the court, The allowing he might be committed, shews they were indictable. It is true, the justice may make himself judge, and punish him immediately: but still, if he thinks proper to proceed less summarily by way of indictment, he may. The true distinction is, that where the words are spoken in the presence of the justice, there he may commit; but where it is behind his back, the party can only be indicted for a breach of the peace. Judgment for the King.

Whether a magistrate, not sitting as chairman of a Court, but in his private office, can commit for a contempt, does not appear to have been expressly decided. In *Pettit* v. *Addington*, *Esq.* *Sitt.* after *E. T.* 31 *G.* 3. *Peake's Rep.* 62. Ld. *Kenyon* C. J. said he must own he had a leaning on his mind, but still he would not deliver or intimate any opinion, as he wished the question to be seriously considered and determined in court.

Clearly such a commitment (if legal) must be by warrant *in writing*, as appears from the following case. *Mayhew* v. *Locke*, 7 *Taunt.* 63, 2 *Marsh*, 377. *S. C.* In an action for false imprisonment, the defendant pleaded the general issue. Upon the trial of the cause before *Bayley* J. at *Surrey Lent Assizes*, 1816, it appeared that the *defendant* was a magistrate; and that the *plaintiff*, who was a constable, having been engaged till evening in executing a warrant signed by the defendant, enquired of him whether any thing was allowed for his service, and on being answered in the negative, said to the defendant, "*If you have any more warrants to serve, do not send them to me, for I will not serve them;*" the defendant mildly replied, *What is that you say*, Mayhew? The plaintiff repeated, "*If you have any more warrants to serve, do not send to me, for I will not serve them, you may serve them yourself.*" The defendant immediately gave a verbal order that the plaintiff should be taken away to the cage, in the *town of Farnham*, which was done, and he was confined until the next morning, when he was discharged. For the defendant, it was contended, that he was warranted, as a magistrate, in committing the plaintiff to prison for a contempt, of which he had been guilty, in using the disrespectful language above stated. *Bayley* J. reserved the point, subject whereto, the jury found a verdict for the plaintiff with 5*l.* damages. *Gibbs* C. J. (C.P.) in delivering the opinion of the Court said, "As to the merits, without considering whether the words spoken were, or were not, a sufficient cause of commitment by the magistrate, we are of opinion that this commitment, which was clearly a commitment by way of punishment, and was made by word

of mouth only, without warrant in writing, cannot be supported, for it is clearly laid down in 2 *Haw.* c. 16. § 3., and by Ld. *Hale*, (2 *Hale*, 122.), that such a commitment by a magistrate *must be made by warrant in writing*."

Form of Commitment for insulting a Justice of Peace in the execution of his Office.

To the constables of the parish of ——— in the county of ——— and to the keeper of the common gaol at ——— in the said county.

County of ——— to wit. } *WHEREAS* A. B. *being personally present this day, at* ——— *in the said county, before me* S. P. *esquire, one of his majesty's justices of the peace in and for the said county, to answer and make his defence to a certain information before me exhibited against him, for* [state the offence], *and being so personally present before me hath this day been guilty of divers gross insults and contemptuous behaviour to me the said justice, then being in the actual execution of my office as such justice of the peace as aforesaid, by accusing me of partiality and injustice in the execution of my office,* [or, by using abusive and opprobrious language, or violent and threatening gestures, &c. according to the fact]. *And whereas the said* A. B. *in consequence of such his insolent and contemptuous behaviour is now here by me the said justice required to find sureties for his good behaviour; that is to say, two sufficient sureties to become bound with him in a recognizance in the sum of* —— *l. each, conditioned for the personal appearance of the said* A. B. *at the next general quarter sessions of the peace, to be holden in and for the said county, and that in the mean time he should be of good behaviour; but the said* A. B. *hath refused to find sureties and to become bound in such recognizance as aforesaid. These are therefore to command you the constables of the parish of* ——— *aforesaid, to convey and deliver the said* A. B. *into the custody of the keeper of the common gaol at* ——— *in the said county, together with this my warrant; and I hereby command you the said keeper, to receive the said* A. B. *into your custody in the said common gaol, and him there safely to keep until the next general quarter sessions of the peace to be held for the said county, unless he in the mean time find such sureties and enter into such recognizance as aforesaid. Given under my hand and seal, the* —— *day of* —— *in the year of our Lord one thousand eight hundred and* —— *S. P.* (L.S.)

See *Rex* v. *James*, 5 *B.* & *A.* 894. Vol. I. tit. Commitment.— See also 2 *Ld. Raym.* 1030.

Rex v. *Pocock*, 2 *Str.* 1157. An information was moved for against the defendant, on account of words spoken of Mr. *Kent*, a justice of the peace. The affidavit stated, that in a conversation about a warrant granted by Mr. *Kent*, the defendant asked, if Mr. *Kent* were a sworn justice; and being answered to be sure he was, else he would not act, the defendant replied, *If he is a sworn justice, he is a rogue and a forsworn rogue.* To this it was objected, that the words were not spoken to him in the execution of his office, but only in relation to what he had formerly done: And by the court, There ought to be no information; it is not the same insult and contempt, as if spoken to him in the executon of his office, which would make it a matter indictable.

Nevertheless, according to the distinction in the aforesaid case of *Aston* v. *Blagrave*, although an *information* or *indictment* might not lie, yet it doth not follow but that the words were *actionable;* in point of fact Mr. *Kent* afterwards recovered against this defendant in an action, *Kent* v. *Pocock*, 2 *Str.* 1168.

Is not punishable for a mere error in judgment.

In the next place; he is not punishable at the suit of the party, but only at the suit of the king, for what he doth as judge in matters which he hath power by law to hear and determine without the concurrence of any other; for regularly no man is liable to an action for what he doth as judge: but in cases where he proceeds ministerially, rather than judicially, if he act corruptly, he is liable to an action at the suit of the party, as well as to an information at the suit of the king. 2 *Haw. c.* 13. § 20.

Information for refusing to grant a licence.

And more explicitly, in the case of *Rex* v. *Young and Pitts*, esquires, justices of the peace for *Wiltshire*, 1 *Burr.* 556., which was upon an information moved for against the justices, for arbitrarily and unreasonably refusing to grant an alehouse licence; Ld. *Mansfield* C. J. declared, that the court of K. B. hath no power or claim to review the reasons of justices of the peace, upon which they form their judgments in granting licences, by way of appeal from their judgments, or over-ruling the discretion in that behalf entrusted to them. But if it clearly appear that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have (consequently) abused the trust reposed in them, they are liable to prosecution by indictment, or information; or even, possibly, by action, if the malice be very gross and injurious. If their *judgment* is wrong, yet their *heart* and *intention* pure, God forbid that they should be punished. And he declared that he should always lean towards favouring them, unless partiality, corruption, or malice should clearly appear. *Denison* J. said, it must be a *clear* and *apparent partiality*, or wilful misbehaviour, to induce the court to grant an information: not a mere error in *judgment*. *Foster* J. concurred. And *Wilmot* J. was also very explicit that the rule is invariable, that this court will never interpose to punish a justice of the peace for a mere error in judgment. Therefore, even supposing the justices in the present case to have been mistaken from beginning to end; yet there is no ground, from any of the affidavits, to infer any partiality, malice, or corruption. And the court, being unanimously of opinion that the justices had acted in this affair with candour and impartiality, discharged the rule to shew cause, with costs. Vide Vol. I. p. 46.

Justices not to be punished for error in judgment.

Vide Vol. I. p. 33.

And in *Rex* v. *Cox*, 2 *Burr.* 785. On shewing cause why an information should not be granted against the defendant, being a justice of the peace, for refusing to receive an information against a baker for exercising his trade on a *Sunday;* the court declared that they would never grant an information against a justice for a mere error in judgment: But in this case they were of opinion that the justice had acted right in refusing; and they ordered the rule to be discharged, with costs.

And finally, in *Rex* v. *Palmer and Baine, esquires, and others*, 2 *Burr.* 1162. Upon shewing cause why an information should not be granted against two justices of the peace and others for a misdemeanor, relating to the conviction of a poacher, and the circumstances attending it: the court thought proper, on consider-

ation of the affidavits, to discharge the rule, as to all the defendants, with costs to be paid to the justices, but without costs as to the others. And they were, upon this occasion, most explicit in their declaration, that even where a justice acts *illegally* (which however was not the present case), yet if he has acted *honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever*, the court will never punish him in this extraordinary mode by an information, but leave the parties complaining to their ordinary legal remedy or method of prosecution, by *action* or by *indictment*.

So in *Rex* v. *Jackson and another*, 1 *T. R.* 653. *Per Cur.* Wherever magistrates act uprightly, though they may mistake the law, no information will be granted against them. But if they act improperly, and knowingly, information shall be granted, as in the case of *Rex* v. *Holland and another*, 1 *T. R.* 692.; and in *Rex* v. *Filewood and another*, for granting an ale licence, previously refused by other justices upon good grounds, informations were granted.

Informations granted against justices for knowingly misbehaving.

And the justice shall not be liable to be punished both ways, that is, both criminally and civilly; but before the court will grant an information, they will require the party to relinquish his civil action, if any such is commenced. And even in the case of an indictment, and though the indictment be actually found, yet the attorney-general (on application made to him) will grant a *noli prosequi* upon such indictment, if it appear to him that the prosecutor is determined to carry on a civil action at the same time. *Rex* v. *Fielding*, 2 *Burr.* 719.

Lowther v. *the Earl of Radnor and another*, 8 *East*, 113. This was an action of trespass brought against the defendants for having as justices issued a warrant of distress against the goods of the plaintiff, for a cause which, upon the face of the order, appeared to be within their jurisdiction. Upon the trial, in order to prove the justices to have been trespassers, other facts than those stated before them when they made their order were proved. A verdict was found for the plaintiff, subject to the opinion of the court of K. B. And it was held by Ld. *Ellenborough* C. J. that the magistrates could not be affected as trespassers, if the facts stated to them upon oath by the complainant were such whereof they had jurisdiction to enquire, and nothing appeared in answer to contradict the first statement. And *Lawrence* J. said, if the magistrates made an order against the evidence laid before them, the party injured would have another sort of remedy against them. But here it appears that a certain complaint was made to them on oath, which, as it appears on the face of the order, is valid in law; of this the plaintiff had due notice. If then he would complain of what was done upon it, he ought to have shewn that the facts on which he now relies were proved before the magistrates. But he cannot make them trespassers by shewing that the real facts of the case will not support the complaint, unless such facts were proved before them at the time.

By stat. 24 *G.* 2. *c.* 44. § 1. It is enacted that "no writ shall be sued out against nor any copy of any process at the suit of a subject shall be served on any justice of the peace, for any thing by him done in the execution of his office, until notice in writing of such intended writ or process shall have been deli-

24 G.2. c.44. No writ against a justice for execution of his office, until notice, &c.

24 G. 2. c. 44. vered to him, or left at the usual place of his abode, by the attorney or agent for the party who intends to sue or cause the same to be sued out or served at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action, which such party hath or claimeth to have against such justice of the peace: on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode; who shall be entitled to have the fee of twenty shillings for the preparing and serving such notice and no more."

It has been deemed sufficient to entitle a justice to the benefit of this statute, that he conceived himself to be acting as justice, though what he did was not in the regular execution of his office. *Bird* v. *Gunston*, E. 24 *G.* 3. K. B. 2 *Chitt. Rep.* 459. and see *Weller* v. *Toke*, 9 *East.* 365. per *Ellenborough*, C. J.—*Graves* v. *Arnold*, 3 *Camp.* 242.—*Gaby* v. *Wilts Canal Company*, 3 *M. & S.* 580.—*Agar* v. *Morgan and others*, 2 *Price*, 126. *Daniel* v. *Wilson*, 5 *T. R.* 1.

Notice of action brought. And accordingly, the lord of a manor, who is also a justice of the peace, is entitled to a month's notice of an action brought against him, for taking away a gun in the house of an unqualified person, for it will be presumed that he acted as a justice.—*Briggs* v. *Sir F. Evelyn*, 2 *H. Blac.* 114.

So *one* magistrate who had committed the mother of a bastard to prison, for not filiating the child, was holden to be entitled to the notice of action required by the stat., though by stat. 18 *Eliz. c.* 3. § 2. jurisdiction over the subject matter is committed to *two* magistrates.—*Weller* v. *Toke*, 9 *East*, 364. 2 *Camp.* 199. *n. S. C. cited.* See Vol. I. *tit.* Commitment.

And where a magistrate acts upon a subject matter of complaint, over which he has authority, but which arises out of his jurisdiction, he is entitled to notice of action. *Prestidge* v. *Woodman*, 1 *B. & C.* 13.

But no notice is necessary, to support an action against a person, for the penalty given by stat. 18 *G.* 2. *c.* 20. for acting as a justice, without a proper qualification. *Wright* v. *Horton*, *Holt's Rep.* 458.

The notice to a justice of the peace must express the nature of the *writ* or *process* intended to be sued out; as well as of the cause of action. *Lovelace* v. *Curry*, 7 *T. R.* 631.

And where the notice was not indorsed with the place of abode of the attorney, but concluded thus:—"Given under my hand at *Durham*, this ——— day of ———," it was deemed sufficient. *Taylor* v. *Fenwick*, 7 *T. R.* 635. 3 *Bos. and Pull.* 553. (*a*) *S. C. cited.*

But a notice to a magistrate need not specify the *form* of action intended to be brought: it is sufficient if it state the writ or process, and the cause of action. *Sabin* v. *De Burgh and others.* 2 *Camp.* 196.

And in stating the cause of action in a notice given pursuant to the directions of an act of parliament, it is sufficient to inform the defendant substantially of the ground of complaint. *Jones* v. *Bird and others.* 5 *B. & A.* 837. 1 *Dowl. & Ryl.* 497. *S. C.*

Where notice of action is given to a magistrate, under the above stat. it is sufficient, in indorsing the attorney's name, to put the initial only of his *christian* name, with his surname and place of

abode, in words at length. *Mayhew* v. *Locke.* 7 *Taunt.* 63.—2 *Marsh,* 377. *S. C.*

In *Crooke* v. *Curry, Durham Sum. Ass.* 1789. *MSS. Thomson* B. held, that the attorney's name and place of abode being in the body, instead of on the back of the notice, was sufficient, on the grounds of the intent of the statute being, that the justice might be able to tender amends to the party or his attorney, and of the case of *Rex* v. *Bigg,* 1 *Str.* 18. 3 *P. Wms.* 419. in which a writing on the inside of a bank note, was holden to be properly described as an indorsement, even in an indictment for forgery. *Sed quære,* and see *Lovelace* v. *Curry,* 7 *T. R.* 364, 5.

The attorney giving the notice, may describe himself generally of the town in which he resides, as of "*Birmingham,*" *Osborn* v. *Gough.* 3 *Bos. & Pull.* 551. or "*Bolton-en-le-Moor.*" *Crook* v. *Curry, Durham Sum. Ass.* 1789; but *Thomson* B. then said, "*London, Manchester,*" or other such large town, generally would not be sufficient; though where he described himself in the notice as of a place in *London,* which in fact was in *Westminster,* it was holden to be fatal." *Stears* v. *Smith,* 6. *Esp.* 138.

If the action be brought against a justice, for any thing done under a conviction which has been quashed, the notice must state that it was done *maliciously,* and without any reasonable or probable cause; and the action must be an action upon the case, stat. 43 *G.* 3. *c.* 141. post, and see *Massey* v. *Johnson,* 12 *East,* 67.—*Gray* v. *Cookson and another.* 16 *East,* 13. See also *Burley* v. *Bethune,* 1 *Marsh.* 220.

24 G.2. c.44. Tender of amends.

By stat. 24 *G.* 2. *c.* 44. § 2. It is further enacted, "That it shall and may be lawful to and for such justice of the peace, at any time, within one calendar month after such notice given as aforesaid, to tender amends to the party complaining, or to his or her agent or attorney; and in case the same is not accepted, to plead such tender in bar to any action to be brought against him, grounded on such writ or process, together with the plea of not guilty, and any other plea with the leave of the court, and if upon issue joined thereon the jury shall find the amends so tendered to have been sufficient, then they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuit, or shall discontinue his or her action, or in case judgment shall be given for such defendant or defendants upon demurrer, such justice shall be intitled to the like costs as he would have been intitled unto in case he had pleaded the general issue only; and if upon issue so joined the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant or defendants on such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he or she shall recover, together with his or her costs of suit."

Proof of notice.

§ 3. No plaintiff shall recover any verdict against such justice in any case where the action shall be grounded on any act of the defendant, as justice of the peace, unless it is proved upon the trial of such action, that such notice was given as aforesaid; but in default thereof such justice shall recover a verdict and costs as aforesaid.

In cases to which the act applies, if the plaintiff's attorney make out two papers precisely similar, purporting to be demands of a copy of the warrant, pursuant to the statute, and sign both for his client, and then deliver one to the defendant, the other will be

evidence at the trial. *Jory* v. *Orchard*, 2 *Bos. & Pull.* 39. and see *Surtees and another* v. *Hubbard*, 4 *Esp.* 203. *Peake's Ev.* *2nd Ed. p.* 108. *Philipson* v. *Chase*, 2 *Campb.* 110.

24 G. 2. c. 44. Justice may pay into court, before issue joined, such sum as he shall think fit.

By stat. 24 *G.2. c.* 44. § 4. It is further enacted, that in case such justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit; whereupon such proceedings, orders, and judgments shall be had, made and given in and by such court, as in other actions where the defendant is allowed to pay money into court.

In an action against a magistrate for an assault and false imprisonment, after the general issue pleaded the court will permit the defendant to withdraw his plea and pay money into court and plead *de novo*. *Devaynes* v. *Boys*, 7 *Taunt.* 33. 2 *Marsh.* 356. *S. C.*

Evidence not to be given of any cause, but such as is contained in the notice.

By § 5. It is further enacted, that no evidence shall be permitted to be given by the plaintiff on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

Action not to be brought against any constable acting in obedience to justices' warrant, till demand made of the copy of the warrant, and refusal thereof, &c.

§ 6. No action shall be brought against any constable, headborough, or other officer, or against any person or persons acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, headborough, or other officer, or against such person or persons acting in his aid for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant, defendant or defendants, that* on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices; and if such action be brought jointly against such justice or justices, and also against such constable, headborough, or other officer, or person or persons acting in his or their aid as aforesaid, then on proof of such warrant the jury shall find for such constable, headborough, or other officer, and for such person and persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the justice or justices, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid.

* *Sic.*

The intent of these provisions was to prevent the constable or other officer, when acting in *obedience* to his warrant, (*Money and others* v. *Leach*, 3 *Burr.* 1742. 1 *Blac. Rep.* 555. *S. C. Postlethwaite* v. *Gibson and another*. 3 *Esp.* 226. *Bell* v. *Oakley and others*, 2 *M. & S.* 259.) from being answerable on account of any

defect of jurisdiction in the justice: therefore if an officer seize goods, in obedience to the warrant of a magistrate, whether that warrant be legal or not, he cannot be sued, until a previous demand has been made of a copy of it. *Price* v. *Messenger and others*. 3 *Esp.* 96. 2 *Bos. & Pull.* 158. *S. C.* 24 G. 2. c. 44.

And a constable, executing the warrant of a justice of the peace, if sued in trespass without the magistrate, is within the protection of the stat., and entitled to a verdict on proof of such warrant; having first complied with the plaintiff's demand of a perusal and copy of the warrant before the action brought, though not within *six days* after such demand as the act directs. *Jones* v. *Vaughan and another*, 5 *East*, 446.

But where a constable of one hundred took upon him to execute a warrant out of his own hundred, directed to the constable of another hundred by name, "and to all other peace officers in the county of *Kent*," this was holden not to be a case within the protection of the statute. *Blatcher* v. *Kemp*, 1 *H. Blac.* 15 (a.)

So whose goods were taken by constables under a warrant of distress, granted by a justice of the peace for the county of *Kent*, directed "to the constables of the lower half hundred of *C.* and *G. in the county of Kent*," which warrant recited, that the plaintiff (whose goods were distrained) *of the parish of G. in the said county*, was ballotted for the militia of the said county, and having refused to serve, &c., was convicted in a certain penalty, for levying which the warrant was granted: if it turn out that the warrant was executed within a certain part of the parish of *G.*, within the juridiction of the *cinque ports*, and not within the county of *Kent*, the constables are not within the protection of the statute, and may be sued *in trespass* without the magistrates being made a defendant. *Milton* v. *Green and another*, 5 *East*, 233. See *R.* v. *Weir*, Vol I. and stat. 5 *G.* 4. *c.* 18. § 6. Vol. I. *tit.* Arrest, p. 219.

And where the defendants, in order to levy a poor's rate under a warrant of distress granted by two magistrates, broke and entered the house and broke the windows, &c., it was held, that they might be sued in trespass without a previous demand of the perusal and copy of the warrant. *Bell* v. *Oakley and others*, 2 *M. & S.* 259.

It has been determined that a churchwarden or overseer of the poor, taking a distress for a poor's rate, *Bull. N. P.* 24. *Harper* v. *Carr*, 7 *T. R.* 270., or a gaoler receiving and detaining a prisoner, *Butt* v. *Newman*, *Gow's R.* 97., under a warrant of magistrates, is entitled to the protection of the statute, in having the magistrates made defendants with him in an action of trespass; and a *constable*, who merely acts in aid of a parish officer in levying a distress for poor's rates, under a warrant of magistrates directed to such officer, is not liable to an action of trespass, although a demand was duly made on such constable in pursuance of the statute. *Clarke* v. *Davy*, 4 *Moore*, 465.

Churchwarden, overseer, and gaoler protected when acting under justices' warrant.

But an action of *replevin* is holden not to be an action within the meaning of the statute. *Milward* v. *Caffin*, 2 *Blac. R.* 1330. *Fletcher* v. *Wilkins*, 6 *East*, 283., but see *Pearson* v. *Roberts and another*, *Willes* 668. *Harper* v. *Carr*, 7 *T. R.* 270. *contra*.

The act, however, extends only to actions of *trespass* or *tort*; therefore where an action for money had and received was brought against an officer who had levied money, on a conviction by a

justice of the peace, the conviction having been quashed, it was holden, that a demand of a copy of the warrant was not necessary. *Bull N. P.* 24.

24 G. 2. c. 44. Where the judge shall certify the cause of action was wilfully committed, plaintiff to recover double costs.

Stat. 24. *G.* 2. *c.* 44. § 7. Provides, that where the plaintiff, in any such action against any justice of the peace, shall obtain a verdict, in case the judge before whom the cause shall be tried, shall, in open court, certify on the back of the record that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

Limitation of actions.

§ 8. No action shall be brought against any justice of the peace for any thing done in the execution of his office, or against any constable, headborough, or other officer, or person acting as aforesaid, unless commenced within six calendar months after the act committed.

These months it seems are to be returned *inclusive* of the day of committing the act. *Clarke* v. *Davey*, 4 *Moore*, 465.

But in the case of a continued imprisonment, the magistrate is liable to answer in an action for such part of the imprisonment, suffered under his warrant, as was within six calendar months before the action commenced against him. *Massey* v. *Johnson*, 12 *East*, 67.

And where an action of assault and false imprisonment was brought against a constable, who had exceeded his authority, it being objected that the plaintiff had not shewn the action commenced within *six* months, according to the above statute, Ld. *Kenyon* C. J. overruled the objection, on this distinction, that the defendant acted *colore officii*, and not *virtute officii;* and said, that it had often been held that a constable acting *colore officii* was not protected by the statute, where the act committed is of such a nature that the office gives him no authority to do it; in the doing of that act he is not to be considered as an officer; but where a man doing an act within the limits of his official authority, exercises that authority improperly, or abuses the discretion placed in him, to such cases the statute extends; the distinction is between the extent and the abuse of the authority. *Alcock* v. *Andrews*, 2 *Esp.* 542. *and see* 2 *Chitt. Rep.* 140.

So where a constable acting under a warrant commanding him to take the goods of *A.* takes the goods of *B.*, believing them to belong to *A.*, he is entitled to the protection of statute 24 *G.* 2. *c.* 44. § 8.; and an action therefore must be brought against him within *six* calendar months. *Porter* v. *Williams*, 3 *B.* & *A.* 330.

And in like manner, where constables under a warrant to search a house for black cloth which has been stolen, finding no black cloth, but cloth of other colours, carried it before a magistrate, refusing at the same time to tell the owner of the house searched whether they had any warrant or no; the court of C. P. held, that they were within the protection of the statute, and that an action against them ought to have been commenced within six months after the grievance complained of. *Smith* v. *Wiltshire and others*, 2 *Brod.* & *Bing.* 619. *and see* 3 *Brod.* & *Bing.* 239.

But where a constable having a magistrate's warrant of distress to levy a church rate, under the statute 53 *G.* 3. *c.* 127. broke the door of and entered the plaintiff's dwelling-house; the court held, that although he thereby exceeded his authority, yet that no ac-

tion could be maintained after the expiration of three calendar months. *Theobald* v. *Crichmore*, 1 *B.* & *A.* 227. 24 G. 2. c. 24.

By stat. 21. *Jac.* 1. *c.* 12. § 5. it is enacted, that in all actions upon the *case* or trespass against justices of the peace, &c. or *other* persons acting in their aid and assistance, or by their command, for any thing done in their official capacity, the venue must be laid in the county wherein the facts were committed, and not elsewhere. But an action against a constable is not confined to the proper county where he does not act in execution of his office. 1 *Str.* 446. 3 *Burr.* 1742. *and see* 2 *Esp.* 542. 3 *Esp.* 226. 2 *Stark. N. P.* 445. 21 J. 1. c. 12.

In actions against justices, &c. the defendant by stat. 7 *Jac.* 1. *c.* 5. is allowed to plead the general issue, and give the special matter in evidence.

In an action of trespass for false imprisonment, a constable may justify under the general issue though he acted without a warrant, provided there were a reasonable charge of felony made; although he afterwards discharge the prisoner, without taking him before a magistrate, and although it should turn out, in fact, that no felony was committed. *M'Cloughan* v. *Clayton and Riding*, *Holt's Rep.* 478.

But a private individual who makes the charge, and puts the constable in motion, cannot justify under the general issue; he may plead the special circumstances by way of justification, in order that it may be seen whether his suspicions were reasonable. *Id.*

And to render justices of the peace more safe in the execution of their duty, it is enacted by stat. 43 *G.* 3. *c.* 141. that "in all actions whatsoever which shall, at any time after the passing of this act, be brought against any justice or justices of the peace in the U. K. of *G. B.* and *Ireland* for or on account of any conviction by him or them had or made, under or by virtue of any act or acts of parliament in force in the said U. K., or for or by reason of any act, matter, or thing whatsoever, done or commanded to be done by such justice or justices, for the levying of any penalty, apprehending any party, or for or about the carrying of any such conviction into effect, in case such conviction shall have been quashed, the plaintiff or plaintiffs in such action or actions, besides the value and amount of the penalty or penalties which may have been levied upon the said plaintiff or plaintiffs, in case any levy thereof shall have been made, shall not be entitled to recover any more or greater damages than the sum of 2*d.*, nor any costs of suit whatsoever, unless it shall be expressly alleged in the declaration in the action wherein the recovery shall be had, and which shall be in an action upon the case only, that such acts were done maliciously and without any reasonable and probable cause."

43 G. 3. c. 141. In actions against justices for any conviction, &c. the plaintiff (besides any penalty levied) shall recover only 2d. damages, unless malice and want of probable cause be expressly alleged.

But this statute does in no instance extend to protect justices of the peace, in the execution of their office against actions of trespass or imprisonment, unless done on account of some conviction made by them of the plaintiffs in such actions by virtue of any stat. &c. 12 *East*, 67.

And it seems, that the stat. extends to those cases only, where the conviction has been quashed. *Id.* 78, 9. 16 *East*, 13. 21.

It seems, also, that if a conviction be good upon the face of it,

the production and proof of it at the trial, will justify the convicting magistrates, under the general issue in an action of *trespass*, as well in respect of such facts stated therein as are necessary to give them jurisdiction, as upon the merits of the conviction. 16 *East*, 13. 21. and see 3 *Moore*, 294.

In an action against a magistrate for a malicious conviction, it is not sufficient for the plaintiff to shew, that he was innocent of the offence of which he was convicted, but he must also prove, from what passed before the magistrate, that there was a want of probable cause. 1 *Marsh*. 220.

7 J. 1. c. 5. By stat. 7 *Jac*. 1. *c*. 5. (made perpetual by stat. 21 *Jac*. 1. *c*. 12. § 2.) if any action, bill, plaint or suit on the case, trespass, battery, or false imprisonment is brought in any of H. M.'s courts at *Westminster* or elsewhere, against any justice of peace, mayor, or bailiff of city or town corporate, headborough, port-reve, constable, tithingman, collector of subsidy or fifteens, for or concerning any matter, cause, or thing, by them or any of them done by virtue of his or their offices, [the action, &c. shall be laid within the county where the trespass or fact is done and committed, and not elsewhere, 21 *J*. 1. *c*. 12. § 3—5.] and every defendant may plead the general issue, not guilty, and give in evidence the special matter, which being pleaded, had been good in law to have discharged defendant of the trespass or other matter laid to their charge, [and if on the trial plaintiff shall not prove that the cause of action accrued within the county in which it is laid, the jury shall find defendant not guilty, without regard to any other evidence for plaintiff, 21 *J*. 1. *c*. 12. § 3—5.] and if a verdict pass for defendant, or if plaintiff discontinues or is nonsuit, defendant shall have his double costs, which he shall have sustained by wrongful vexation in defence of the said action. See 2 *Vent*. 45. *Doug*. 307, 8. 7 *T. R*. 448.

21 J. 1. c. 12.

Remedies against justices misbehaving in their offices.

If a justice will not, on complaint to him made, execute his office, or shall misbehave in his office, the party grieved may move the court of K. B. for an information, and afterwards may apply to the court of chancery to put him out of the commission. *Cromp*. 7. 2 *Atk*. 2.

The court of K. B. will grant an information against a justice as well for refusing or criminally neglecting to act on any given occasion as for misconducting himself in his office.

Any fraud or misconduct imputed to magistrates, in proceeding notwithstanding the issuing of a *certiorari*, may be a ground for a criminal proceeding against them; and Ld. *Kenyon* said, he believed there were instances in which a criminal information had been granted against magistrates acting in sessions. 7 *T. R*. 374.

But in *Rex* v. *Skinner*, *T*. 12. *G*. 3. *Lofft*, 55. On motion to quash an indictment against —— *Skinner*, *Esq*. one of H. M.'s justices of the peace of the town of *Poole*, for scandalous words spoken by him, in a general sessions of the county; in which he said to the grand jury, "You have not done your duty; you have "disobeyed my commands: you are a seditious, scandalous, corrupt, and perjured jury." Lord *Mansfield* C. J. said neither party, witness, counsel, jury, or judge, can be put to answer, civilly or criminally, for words spoken in office. If the words spoken are opprobrious or irrelevant to the case, the court will take notice of them as a contempt, and examine on information. If

any thing of *mala mens* is found on such inquiry, it will be punished suitably.

But the court refused a criminal information against a magistrate for returning to a writ of *certiorari* a conviction of a party in another and more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted by the magistrate's clerk, the conviction returned being warranted by the facts. Ld. *Kenyon* C. J. commended the magistrates in this case, and observed, that it was matter of constant experience for magistrates to take minutes of their proceedings, without attending to the precise form of them at the time when they pronounce their judgment, to serve as memoranda for them to draw up a more formal statement of them afterwards to be returned to the sessions, and that it was by no means unusual to draw up the conviction in point of form after the penalty had been levied under the judgment; nor was there any legal objection to this method, provided the facts would warrant them in stating what they did. *Rex* v. *Barker*, 1 *East*, 186.

But the most usual way of compelling them to execute their office in any case is by writ of *mandamus* out of the K. B.

Assault on a magistrate in the execution of his office, justified by the previous aggression of the magistrate.

In *Rex* v. *Symonds*, *Cas. temp. Hardw.* 240. An information was moved for against the defendant, for assaulting and beating the mayor of *Yarmouth*, being a justice of the peace, in the execution of his office. On shewing cause, the question was Whether the defendant could justify, the mayor having struck him first?—By Ld. *Hardwicke* C. J. He may justify it; for though a magistrate is protected by the law whilst he is in the execution of his office, yet in this instance he hath forfeited that protection, by beginning a breach of the peace himself.

Criminal information against a magistrate for misconduct.

Rex v. *Herries and Peters*, 13 *East*, 270. A criminal information may be moved for against magistrates for misconduct in the execution of their office in the *second term* after the offence committed, there being no intervening assizes. Vide Vol. I. p. 48.

But the court will not grant a rule *nisi* for a criminal information against a magistrate so late in the second term after the imputed offence, as to preclude him from the opportunity of shewing cause against it in the same term Vide *Rex* v. *Marshall and Grantham*, 13 *East*, 322. Vol. I. p. 49.

Where the facts tending to criminate a magistrate took place twelve months before the application to the court, they refused to grant criminal information, although the prosecutor, in order to excuse the delay, stated that the facts had not come to his knowledge till very shortly previous to the application.

Rex v. *Bishop, Esq. E.* 3 *G.* 4. 5 *B.* & *A.* 612. A rule *nisi* was obtained in last *M. T.* for a criminal information against the defendant for corrupt practices as a justice of the peace. The latest circumstances alleged in the affidavits for the prosecution, took place in 1820. But in order to account for the delay, the prosecutor swore that he had no knowledge of the facts till shortly before the application, when there having been a meeting of magistrates on the 17th *November* last, for the purpose of investigating the defendant's conduct, he and another magistrate not being satisfied with the defendant's explanation, instituted the present enquiry. On shewing cause, it was objected, first, that the application was too late. And *Rex* v. *Marshall*, 13 *East*, 322. and *Rex.* v. *Herries*, 13 *East*, 270., where it was so held, were referred to. If the want of knowledge will afford an excuse, a wide door will be open, for it will be in all cases easy to find some one in that situation who will prosecute. *Contrà.* Here the investigation on the 17th *November* last was relied on, as taking the case out of

the usual rule.—*Abbott* C. J. We do not by discharging this rule, shut the door to an enquiry, for a bill of indictment may still be preferred against the defendant. But if we were to admit this excuse, we should entirely frustrate the very useful rule to which we have been referred. Perhaps, if at the investigation all the magistrates present had concurred in directing such an application to be made, the case might be different; but that does not appear to be the case. The rule must be discharged. The Court upon this objection, having refused to discharge the rule with costs, the objection was waved, and the merits entered into. R. D. with costs.

Other matters relating to the very extensive office of this magistrate, may be found under their proper heads, in almost every title of this book.

See stat. 3 *G.* 4. *c.* 46. § 2. title Fines, Vol. II. And see title Sessions, Vol. V.

Kidnapping. See Child-stealing.
Labourers. See Servants.
Landlord and Tenant. See Distress.

Land Tax in general.

[38 *G.* 3. *c.* 5.—*c.* 60.—42 *G.* 3. *c.* 116.—50 *G.* 3. *c.* 58.—52 *G.* 3. *c.* 80.]

THE land tax hath succeeded to the place of the ancient fifteenths and subsidies; and the land tax acts are framed in many respects after the manner of the ancient subsidy acts.

We meet with the payment of *fifteenths* as far back as the statute of *Magna Charta;* in the conclusion of which, the parliament grant to the king, for the concessions by him therein made, *a fifteenth part of all their moveable goods.*

This taxation was originally set upon the several *individuals;* afterwards, to wit, in the eighth year of *Edward* the third, a certain sum was rated upon every town, by commissioners appointed in the chancery for that purpose, in like manner as commissioners are now appointed by the several land tax acts for carrying the said acts into execution; which commissioners rated every town at the fifteenth part of the value thereof at that time, and their taxation was recorded in the exchequer; and the inhabitants rated themselves proportionably for their several parts to make up the general sum upon the whole township. This *fifteenth* amounted in the whole to 29,000*l.* or near thereabouts.

But as the necessities of government multiplied, and the value of things increased, this fifteenth was insufficient for the occasions of the public; and thereupon the number of fifteenths was augmented to two or three fifteenths. Which still proving defective, another and quite different taxation was superadded, namely,

the *subsidy*; which was an aid to be levied of every subject of his lands or goods after the rate of 4*s*. in the pound for lands, and 2*s*. 8*d*. for goods. And accordingly, in the ancient subsidy acts, there is first a grant of so many *fifteenths*, and then the grant of a *subsidy*.

These *fifteenths* were certain, as hath been said, from the time of the eighth of *Edward* the third; but the *subsidy* was uncertain, and amounted anciently to about 70,000*l.*; and a subsidy of the clergy at the same time (including the monasteries) was 20,000*l.* In the 8 *Eliz.* a subsidy amounted to 120,000*l.* In the 40 *Eliz.* it was not above 78,000*l.* Afterwards it fell to 70,000*l.*; and by reason of a loose and uncertain way of assessing the same, kept continually decreasing, until the parliament found it necessary to change the method of taxation, and in the time of the long parliament certain sums were fixed upon the several counties; which course of taxation still continues. 2 *Inst.* 77. 4 *Inst.* 33, 34. *Hume's Hist. of Eng.* Vol. V. p. 226, 227. *Gilb. Exch.* c. 14.

And the sum fixed by stat. 38 *G.* 3. *c.* 5. § 1. to be paid in *G. B.* is 2,037,627*l.* 9*s.* 0¼*d.* which is now made perpetual.

38 G. 3. c 5. What persons liable, and in respect of what property.

By stat. 38 *G.* 3. *c.* 5. § 3. Towards raising the said several sums of money (which are continued annually, see stat. 5 *G.* 4. *c.* 15. § 12, 13.) all persons, bodies politic and corporate, guilds, and fraternities, having *any estate in ready money, or in any debts whatsoever*, owing to them within *G. B.*, or without, *or having any estate in goods, wares, merchandises, or other chattels, or personal estate* whatsoever, within *G. B.*, or without, belonging to, or in trust for them, except and out of the premises deducted, such sums as they do *bonâ fide* owe, and such debts owing to them as shall be adjudged desperate by the commissioners, and also except the stock upon lands, and such goods as are used for household stuff, and also except such loans and debts as shall be owing from his majesty to any person, shall pay unto his majesty the sum of four shillings in the pound according to the true yearly value thereof for one year; (that is to say) for every 100*l.* of such ready money and debts, and for every 100*l.* worth of such goods, wares, and merchandises, or other chattels, or personal estate, the sum of 20*l.*, and so after that rate to be assessed, levied, and collected, in manner hereinafter mentioned.

Public officers.

§ 3. All persons, and all commissioners, having, using, or exercising any *public office or employment of profit* in *England, Wales*, or *Berwick*, as aforesaid, and all their clerks, agents, secondaries, substitutes, and other inferior ministers whatsoever (such military officers who are in muster by the muster-master general, or in pay in his majesty's army or navy, in respect of such officers only excepted), shall, towards raising the said sums, yield and pay unto his majesty 4*s*. for every 20*s*. which they receive in one year, by virtue of any salaries, gratuities, bounty-money, rewards, fees, profits, perquisites or advantages whatsoever to them accruing, by reason of their offices or employments, without any abatement whatsoever.

Pensioners.

§ 3. And all persons, guilds, fraternities, bodies politic and corporate, having *an annuity, pension, or other yearly payment*, either out of the exchequer in *England*, or out of any branch of the revenue in *England, Wales*, or *Berwick*, or payable by any person

G. 3. c. 5. whatsoever in *England, Wales,* or *Berwick* (not issuing out of any lands, tenements, or hereditaments, or charged upon the same, touching which other directions are given by this act; and not being annuities, which by any act of parliament are, or shall be specially exempted from the payment of taxes,) shall, towards raising the said sums, yield and pay unto his majesty the sum of 4*s.* for every 20*s.* by the year, for every such annuity, pension, stipend, or yearly payment, and after that rate, the said sum to be assessed and collected in manner hereinafter mentioned.

Present land tax made perpetual.

The land tax acts had hitherto been annual, but by stat. 38 *G.* 3. *c.* 60. it is enacted, that the several sums charged by virtue of an act of the (then) present session (*c.* 5.) granting an aid for the service of the year 1798 on the respective counties, &c. in respect of the manors, messuages, lands, tenements, and hereditaments in said act mentioned, lying within the same respectively, to be raised and paid within one year from 25th *March* 1798, shall, after the expiration of the said term (except as hereinafter mentioned), continue and be raised and paid after the 25th *March* in every year for ever. And all powers, &c. in the said act (*c.* 5.) as far as the same are not varied or otherwise provided for by this act, shall continue in full force, and be put in execution, as fully as if re-enacted in this act; subject nevertheless to the regulations and conditions of redemption or purchase herein mentioned.

Subject to redemption or purchase.

42 G. 3. c. 116. Where the whole tax in any place shall not be sold.

By stat. 42 *G.* 3. *c.* 116. § 180. The whole of the land tax charged on any parish or place shall (notwithstanding the discharge of any part thereof) continue to be inserted in the certificates of assessments to be signed by the commissioners of the land tax, so long as any part of the proportion of land tax charged on such parish or place shall remain payable, either to H. M., or to any such purchaser as aforesaid; and all such lands, &c. which shall not be exonerated by this act from such land tax, shall continue subject to a new assessment yearly, and from year to year, by an equal rate according to the annual value thereof, not exceeding in any year 4*s.* in the pound on such annual value. And such part of the said land tax which shall remain payable as aforesaid in any parish or place shall be raised, &c. in the like form and under such penalties and disabilities, and according to such directions, as if the lands charged with the land tax so remaining payable as aforesaid formed an entire parish or place, and as prescribed by the said act of 38 *G.* 3. *c.* 5. with respect to the *quota* of each parish. Provided, that upon the delivery of the certificates and precepts to the collectors, for the recovering such part of the land tax as shall so remain payable, they shall return in their schedule to the receiver general the amount of the land tax redeemed in such parish, and from the payment of which such place shall be exonerated.

To remain subject to a new assessment.

The amount of the tax redeemed to be inserted by the collectors in their schedules.

By § 182. Whenever in any place separately assessed the whole of the land tax shall have been redeemed, all assessments shall cease.

Persons neglecting to complete their contracts.

By § 167. If any person, after entering into any contract for the redemption or purchase of any land tax, shall afterward refuse or neglect to complete the same, such contract shall be void, and the tax shall be revived, and shall be again assessed and collected, or be again sold by the commissioners specially appointed

and the person so making default shall forfeit not exceeding one sixteenth part of the consideration, to be computed as by the act directed. 42 G.3. c.116.

Where land tax remaining unsold shall exceed 4s. in the pound.

By § 181. If any assessment of land tax which shall continue to be charged in pursuance of this act shall at any time hereafter exceed 4s. in the pound on the annual value, the same shall be subject to an abatement in the manner directed by the said act of 38 *G.* 3. *c.* 5.; and after such abatement an assessment specifying the same shall be made accordingly, and duplicates thereof shall be returned to the receiver general, commissioners of taxes, and the office of the king's remembrancer, as directed in other cases of assessments.

By stat. 42 *G.* 3. *c.* 116. The provisions of the several acts passed for the *redemption of the land tax* are repealed from the 24th of *June* 1802, from which date all contracts are to be entered into and made according to that act and the 43 *G.* 3. *c.* 51., to render the same more effectual.

Commissioners authorized to administer oaths, or receive affidavits taken before justices of the peace.

By stat. 42 *G.* 3. *c.* 116. § 7. The commissioners are directed to examine upon oath or affirmation all persons desirous of redeeming or purchasing land tax; and all persons who shall be willing to be examined touching any matters relating to the title of any person in remainder, reversion, or expectancy to any estate, or having any mortgage, lien, or incumbrance upon any estate, the land tax upon which is proposed to be redeemed or purchased, or touching any matter relating thereto, and also to require from any person claiming any benefit of preference, the production upon oath or affirmation of any deed, conveyance, or instrument, relating to such estate, and to receive any affidavit or deposition in writing upon oath or affirmation, which shall be made in any part of the united kingdom, before any mayor or magistrate of any city, town, or place, having authority to administer an oath in any matter, civil or criminal, or before any justice of the peace of any county or district, &c.

By § 196. Land tax commissioners under the 38 *G.* 3. being also justices for the same place, and not being persons appointed to execute this act, shall be commissioners for hearing appeals made by virtue thereof, for such district in which they are commissioners and also justices.

Appeal.

§ 197. And persons aggrieved in any sale of land tax, where the consideration exceeds not 500*l.* stock, may appeal to the commissioners at the next petty sessions within the district, and the order of such commissioners shall be final; and the commissioners may have the advice of counsel, and may award costs. — But if the consideration exceed 500*l.* application must be made to the court of chancery.

§ 199. H. M. may revoke commissions to persons for selling the land tax under former acts or under this act, and may grant other commissions to other persons.

For the provisions for the redemption of the land tax, the reader is referred to the above very voluminous act, in which they are consolidated, and minutely enacted, as also to stats. 46 *G.* 3. *c.* 133., 49 *G.* 3. *c.* 67. 53 *G.* 3. *c.* 123. 53 *G.* 3. *c.* 142. 54 *G.* 3. *c.* 173. and 57 *G.* 3. *c.* 100.

Stat. 50 *G.* 3. *c.* 58. § 1. extends to twelve months, the time for exonerating ecclesiastical benefices, small livings, and charitable 50 G.3. c.58.

50 G. 3. c. 58. institutions (under stats. 46 *G.* 3. *c.* 133. and 49 *G.* 3. *c.* 67.) from land tax. See stat. 57 *G.* 3. *c.* 100.

By § 2. The powers given by stat. 42 *G.* 3. *c.* 116. § 78. to corporations aggregate to redeem the land tax on the livings, &c. in their patronage, are extended to corporations sole, and to companies.

53 G. 3. c. 123. By stat. 53 *G.* 3. *c.* 123. Several provisions are enacted for the amending and rendering more effectual the acts passed for the redemption and sale of the land tax, but as they in no way concern the office of a justice of the peace, they are not here inserted.

53 G. 3. c. 142. See also stat. 53 *G.* 3. *c.* 142., an act passed for the like purpose.

50 G. 3. c. 58. Stat. 50 *G.* 3. *c.* 58. § 3. extends the time for enrolment and registering of deeds relating to the land tax.

42 G. 3. c. 116. Forging certificates, felony without clergy. By stat. 42 *G.* 3. *c.* 116. § 194. If any person shall forge, counterfeit, or alter, or cause, &c. or knowingly or wilfully act or assist in the forging, &c. any contract for the redemption or sale of any land tax, or any assignment of any such land tax or of any such contract, or of any portion of land tax therein comprised, or any certificate of the commissioners of land tax, or of supply, or of any chief magistrate, or of the surveyor-general of the land revenue of the crown, or of the duchy of *Cornwall*, or any certificate or receipt of the cashiers of the *Bank*, or any certificate or attested copy of any certificate, directed by this act to be made out by the proper officer, or shall wilfully deliver or produce to any person acting under this act, or shall utter any such forged, counterfeited, or altered contract, assignment, certificate, or receipt, knowing the same, with intent to defraud, in every such case every person so offending shall be guilty of felony without benefit of clergy. See also stat. 52 G. 3. *c.* 143. § 6.

As the land tax not purchased will remain to be collected as before, it is thought proper to continue the same under the following heads:

§ I. *Commissioners, who: and their First Meeting for issuing Precepts to return Assessors.*

[5 G. 3. c. 21.—20 G. 3. c. 17.—28 G. 3. c. 2.—38 G. 3. c. 5.— c. 48. — 53 G. 3. c. 142.—1 & 2 G. 4. c. 123.—3 G. 4. c. 14.—c. 88.—4 G. 4. c. 68.]

II. *The Second Meeting: Charge to the Assessors, and therein concerning the Manner of laying the Assessment.*

[20 G. 3. c. 17.—38 G. 3. c. 5.—5 G. 4. c. 15.]

III. *The Third Meeting: Signing the Assessment, with Warrant to collect.*

[20 G. 3. c. 17.—38 G. 3. c. 5.]

IV. *Fourth Meeting: The Appeal.*

[20 G. 3. c. 17.—38 G. 3. c. 5.—42 G. 3. c. 116.—51 G. 3. c. 99.]

V. *Collecting.*
[28 G. 3. c. 2.—38 G. 3. c. 5.]

VI. *Collector paying to the Receiver-general.*
[28 G. 3. c. 2.—38 G. 3. c. 5.—42 G. 3. c. 116.—54 G. 3. c. 142.]

VII. *Receiver paying into the Exchequer.*
[38 G. 3. c. 5.]

VIII. *Duplicates to be transmitted.*
[18 G. 2. c. 18.—20 G. 3. c. 17.—30 G. 3. c. 3.—38 G. 3. c. 5.—39 G. 3. c. 3.—53 G. 3. c. 142.]

IX. *General Penalty on Officers not doing their Duty.*
[38 G. 3. c. 5.]

X. *Indemnity of Officers in doing their Duty.*
[38 G. 3. c. 5.]

§ I. Commissioners, who: and their First Meeting for issuing Precepts to return Assessors.

The commissioners are merely the servants of the crown for the purposes of the act, and have no personal responsibility; there is no estate vested in them by the act, nor any interest in the property which is the subject of it; no remedy therefore lies against them, but in the king's bench by *mandamus* (and which is perhaps doubtful), or by suit in the exchequer. *Williams* v. *Steward,* 3 *Mer. Ch. Rep.* 494.

The last act appointing commissioners for putting the land tax acts in execution is stat. 1 & 2 *G.* 4. *c.* 123. Stats. 3 *G.* 4. *c.* 14. 4 *G.* 4. *c.* 68. rectify mistakes in the names of the commissioners, appoint additional commissioners, and indemnify persons who have acted without due authority, in execution of the two first-mentioned acts. 1 & 2 G. 4. c. 123. 4 G. 4. c. 68.

By stat. 38 *G.* 3. *c.* 48. § 3. No person shall be capable of acting as a commissioner in or for any county within *England,* the dominion of *Wales,* (the counties of *Merioneth, Cardigan, Carmarthen, Glamorgan, Montgomery, Pembroke, Radnor,* and *Monmouth,* excepted) or in or for any of the ridings of the county of *York,* unless such person be seised or possessed of lands, tenements, or hereditaments of the value of 100*l. per annum,* or more, of his own estate, being freehold, copyhold, or leasehold, over and above all ground rents, incumbrances, and other reservations, payable out of or in respect of the same, or unless such person be heir apparent of some person who shall be seized or possessed of a like estate of the value of 300*l. per annum,* one moiety of which said estate required as qualifications shall be situate within such respective county or riding for which such person is appointed a commissioner. 38 G. 3. c. 48. Qualification of commissioners.

By stat. 38 *G.* 3. *c.* 5. § 91. Any person appointed a commissioner for the county of *Anglesea* or *Carnarvon,* shall be capable of acting, being himself or his tenant or trustees taxed for 60*l. per*

8 G. 3. c. 5. *annum*, or more, of his own estate, by virtue of the land tax act of 37 *G.* 3.

n cities and owns corporate. By § 87. All mayors, bailiffs, and other chief magistrates, who are appointed commissioners for executing this act, shall have power to act as commissioners within any city, borough, town corporate, or cinque port, wherein they inhabit, as well where commissioners are specially appointed by this act, as where they are not.

By § 86. If there shall not be a sufficient number of commissioners for any city, borough, cinque port, town, or place, (for which by this act commissioners are particularly appointed), capable of acting according to the qualifications required by this act, in every such case, any of the said commissioners appointed for the county at large, or which is next adjoining, may act as commissioners within such city, borough, town, cinque port, or place.

38 G. 3. c. 48. Commissioners in cities, &c. to be qualified. But by stat. 38 *G.* 3. *c.* 48. § 1. No person shall be capable of acting as a commissioner in the execution of stat. 38 *G.* 3. *c.* 5. within any city, borough, cinque port, or town corporate, unless such person shall, at the time of his acting, be seised or possessed of lands, tenements, or hereditaments, of the value of 40*l.* *per annum*, or more, of his own estate, being freehold, copyhold, or leasehold, over and above all ground rents, incumbrances, and other reservations payable out of such leasehold estates, or unless such person shall, at the time of acting, be possessed of a personal estate to the amount 1000*l.* nor unless he shall in either case be an inhabitant of the city, borough, cinque port, or town corporate, within which he shall act, nor (except in administering the oath or affirmation hereinafter mentioned), until he shall have taken and subscribed the following oath or affirmation, viz.

Oath of qualification. *I* A. B. *do swear* [or, being one of the people called Quakers, *do solemnly affirm*], *that I truly and* bonâ fide *am possessed of in my own right, and in the actual enjoyment or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of forty pounds, or possessed of a personal estate to the amount of one thousand pounds.*

So help me GOD.

Commissioner may administer. Acting, not being qualified, &c. Penalty. Proof of qualification on defendant. Which oath any commissioner may administer to any other. And if any person not so qualified, or not having taken an oath or affirmation as before directed, shall presume to act as a commissioner, such person shall forfeit 50*l.* to such person who shall sue for the same, together with full costs, in any court of record at Westminster, over and above such other punishment as he may be liable to by law for perjury; and in every such action the proof of qualification shall lie on the person against whom the said action shall be brought, and it shall be sufficient for the plaintiff to prove that the defendant hath acted as such commissioner.

38 G. 3. c. 5. Attornies, &c. when may be commissioners. By stat. 38 *G.* 3. *c.* 5. § 92. No attorney or solicitor, or person practising as such, who shall not be seised or possessed of an estate of freehold, copyhold, or leasehold, over and above all ground rents, incumbrances and other reservations, payable out of such leasehold estates, of the value of 100*l.* *per annum*, or more, of his own estate in the same county or place for which he shall be named a commissioner, and which were taxed, or did pay, by virtue of the

same act passed in 37 *G.* 3., or any receiver general or collector, shall be capable of acting as a commissioner. 38 G. 3. c. 5.

And by § 96. if any person intended by this act to be disabled, shall nevertheless presume to act as a commissioner, such person shall forfeit 50*l.* to any person who will inform; to be recovered in any court of record. Penalty for acting without qualification.

§ 49. No person shall be capable of acting as a commissioner, or executing any of the powers of this act, (unless it be the power of administering oaths,) until such time as he shall have taken the oaths of allegiance and supremacy appointed by two acts of parliament, 1 *G.* 1. and 6 *G.* 3., and likewise, if required, on oath specifying in writing, the parish, situation, quantity of land whether freehold or copyhold, of the premises which entitle him to act as a commissioner, which oaths any two of the commissioners may administer. Commissioner's oath.

§ 7. The commissioners shall meet together at the most usual places of meeting within each of the counties and places respectively, within *England, Wales,* and *Berwick-upon-Tweed,* for which they are appointed commissioners, on or before 30th *April,* and afterwards as often as it shall be necessary, for putting this act in execution. Meetings.

And shall also, if they see cause, subdivide themselves, and the other commissioners not then present, into less numbers, so as three or more may be appointed for the purpose of each division; nevertheless, not hereby to restrain the said commissioners from acting in any other part of the county or place for which they are appointed. Subdivisions.

§ 8. The commissioners, at such general meeting, or the major part of them, shall also set down in writing, who and what number, shall act in each of the said divisions, and shall deliver true copies thereof to the receiver general.

§ 14. Clerks shall be appointed by a majority of the acting commissioners present at each respective meeting within every division. Appointing clerks.

Each respective meeting.] *Rex* v. *Commissioners of St. Martin in the Fields,* 1 *T. R.* 149. Ld. *Mansfield* C. J. said, if clerks were appointed under the land tax act *each time of meeting,* there would be no end to the elections: but they receive their allowance under an *annual warrant,* and their appointment is at least for a year.

By stat. 3 *G.* 4. *c.* 88. § 6. After the 25th of *March,* 1822, every appointment of clerk of the commissioners for executing the acts relating to the land tax shall be made for the term and under the regulations for the appointment, continuance, and removal of a clerk to the commissioners for executing the acts relating to the assessed taxes, as is provided by 43 *G.* 3. *c.* 99. 3 G. 4. c. 88. Appointment of clerk to the land tax, to be under the provisions of the assessed tax acts.

The receiver-general shall be appointed by the king, or in pursuance of his directions, and shall have certain allowances according to stat. 3 *G.* 4. *c.* 88. vide tit. Taxes, Vol. V. Receiver-general, who.

By stat. 38 *G.* 3. *c.* 5. § 11. The death or removal of a receiver-general shall be notified to two or more commissioners, by the commissioners for the affairs of taxes, before the time of the first quarterly payment. 38 G. 3. c. 5. Death of receiver-general.

§ 10. And the receiver-general shall give notice under his hand and seal of his appointing a deputy (which appointment shall be Deputy receiver-general.

38 G.3. c.5. also under hand and seal) to two or more commissioners, in ten days after the first meeting, and in ten days after the death or removal of a deputy.

Commissioners to set down the sums on each division.

§ 7. The said commissioners, at such general meeting, are to put so much of this act in execution, and shall set down in writing the several proportions which ought to be charged upon every hundred, lathe, wapentake, rape, ward or other division respectively, towards the raising the whole sum charged upon the whole county, city, or place, by charging in proportion to the sums which were assessed on the same hundreds or divisions, by stat. 4 *W.* & *M. c.* 1.

Note: There is said to have been a hearing on *Feb.* 10, 1746, before the barons of the exchequer, upon the question, whether the commissioners of the land tax, at their general meeting for the city and liberty of *Westminster*, have power to alter the *quotas* in their several parishes, which was continued next day, and that the barons declared they could not depart from the 4 *W.* & *M.* and the parliament only could redress the aggrieved parishes. Vide *Park.* 74.

Issuing precepts to return assessors.

§ 8. And the said commissioners within the several divisions, or any two or more of them, are to cause the proportions charged on the divisions, &c. as aforesaid, towards the aid hereby granted, to be equally taxed within every such division, and within every parish and place therein, according to the best of their judgment,

A. and for that end to direct their several or joint precepts (A) to such inhabitants, high constables, petty constables, bailiffs, and other officers and ministers, and such number of them as they shall think most convenient, to be presentors and assessors, requiring them to appear before the said commissioners at such time and place, not exceeding eight days after the date of such precept, as they shall appoint.

What places shall have benefit of overplus sums discharged.

§ 115. In pursuance of certain clauses contained in several former acts of parliament for land taxes, several parishes and places have been discharged by the barons of the exchequer, of certain overplus sums, wherewith they were over-burthened, by reason of double taxes formerly charged upon them; and the like overplus sums are not comprehended in the proportions by this act charged upon the counties, cities, or other places wherein the said parishes or places formerly overburthened were situate; it is therefore declared, that the ease so given shall accrue only to the respective parishes or places formerly overburthened, and shall not be taken to lessen or discharge any of the sums or proportions to be raised in any other place whatsoever.

§ 47. The commissioners shall also appoint assessors and collectors in privileged and extra-parochial places.

§ 45. But no person in a city, borough, or town corporate, shall be compelled to be an assessor or collector out of the limits thereof.

20 G.3. c.17. Printed forms of assessment to be delivered.

And by stat 20 *G.* 3. *c.* 17. § 3. At the said meeting for appointing assessors, the commissioners shall cause to be delivered to each assessor a printed form of an assessment, according to which they shall make their assessments; which shall be in this manner:

County of N. to wit. For the parish of —— in the said county. } An assessment made in pursuance of an act of parliament passed in the —— year of his majesty's reign, for granting an aid to his majesty by a land tax to be raised in *Great Britain*, for the service of the year one thousand eight hundred and ——. Form of assessment.

Names of proprietors.	Names of occupiers.	Sums assessed.
A. B. ——	Himself. ——	—— — —
A. B. ——	C. D. ——	—— — —
E. F. ——	C. D. ——	—— — —
C. D. ——	G. H. ——	—— — —
J. K. and L. M. ——	N. O. ——	—— — —
P. Q. ——	R. S. and T. U. ——	—— — —

Signed this —— day of —— 18—.

By us,

A. B. } Assessors.
C. D. }

By stat. 53 *G.* 3. *c.* 142. several provisions were enacted for the purpose of explaining and amending stats. 38 *G.* 3. c. 5. and 38 *G.* 3. *c.* 60. § 1. extending the powers and provisions relative to acts authorised by stat. 38 *G.* 3. *c.* 5. to be done by commissioners, assessors, or collectors, (excepting in case otherwise provided for by this act,) to assessments to be made in any subsequent year. 53 G. 3. c. 142.

By stat. 20 *G.* 3. *c.* 17. § 3. If any person or persons shall hold or occupy messuages, lands, or tenements belonging to different owners, the same shall be separately and distinctly rated in such assessments; that the proportion of the land tax to be paid by each separate owner respectively may be known and ascertained. 20 G. 3. c. 17. Who shall be rated.

And by stat. 38 *G.* 3. *c.* 5. § 17. The respective tenants shall pay the tax, and shall deduct the same out of the rent. 38 G. 3. c. 5. Tenants to pay, and deduct it out of rents.

§ II. The Second Meeting: Charge to the Assessors, and therein concerning the Manner of laying the Assessment.

By stat. 38 *G.* 3. *c.* 5. § 8. At the appearance of the assessors, the commissioners shall openly read, or cause to be read unto them, the several rates, duties, and charges, and openly declare the effect of their charge unto them, and how and in what manner they ought to make their assessments, and how to proceed in the execution of their office. Charge to the assessors.

§ 8. If any constable, bailiff, officer, or minister, or other inhabitant, to whom any precept shall be directed, shall absent himself without lawful excuse, to be made out by the oaths of two witnesses (to be administered by the said commissioners, or two of them,) or if any officer or person appearing shall refuse to serve, such officer or person shall, for every such default or refusal, forfeit to H. M. such sum as the commissioners shall think fit, not exceeding 5*l.* nor less than 40*s.*

38 G. 3. c. 5. Appointing a time to bring in their assessments. B.

§ 8. And at and after the charge given, the commissioners shall take care that warrants be issued forth, and directed to two at least of the most able and sufficient inhabitants, appointing and requiring them to be assessors (B); and shall also therein appoint a day and place for the said assessors to appear before them, and to bring in their assessments in writing.

Full sum charged to be assessed.

§ 8. And the assessors are, with all diligence, to assess the full sum given them in charge upon all ready money, debts, personal estates, offices, employments, annuities, and pensions, chargeable according to this act; and by an equal pound rate upon all manors, lands, tenements, rents, hereditaments, and other the premises, within the parishes or places for which they shall be appointed assessors.

20 G. 3. c. 17. Assessments to be put up on the church door, and three duplicates to be made.

And by stat. 20 *G.* 3. *c.* 17. § 3. The said assessors shall make three duplicates of the assessments; and shall (at least fourteen days before delivering the assessments to the commissioners) cause one of the said duplicates, or a fair copy thereof, to be put upon the door of the church or chapel; or if it be for an extra-parochial or other place where there is no church or chapel, then on the door of the church or chapel next adjoining.

38 G. 3. c. 5.

By stat. 38 *G.* 3. *c.* 5. § 44. The commissioners shall tax every assessor within their divisions.

Foreign ministers.

§ 46. The tax on foreign ministers' houses shall be paid by the landlord.

5 G. 4. c. 15. Persons to be rated where resident.

By stat. 5 *G.* 4. *c.* 15. § 20. Every person who is or shall be rated for or in respect of any personal estate, shall be rated at such place where he shall be resident at the time of the execution of this act; and all persons not being householders, nor having a certain place of residence, shall be taxed at the place where they shall be resident at the time of the execution of this act; and if he be out of the realm, such person shall be rated therefore in such parish or place where he was last abiding within this realm.

Personal estate to be assessed where it shall be, though the person resides elsewhere.

§ 21. Provided, that where any person shall have any goods, wares, merchandise, chattels, or personal estate in any parish, constablewick, division, or place, other than the place where he is resident, or had his residence, it shall be lawful to assess such person for such goods, or personal estate where the same shall be: Provided that if any person by reason of his having several places of residence, or otherwise, shall be doubly charged for any personal estate, then upon certificate made by any two commissioners for the place of his last personal residence under their hands and seals, of the sums charged upon him, (which certificate the said commissioners are hereby required to give without delay, fee, or reward), and upon oath made of such certificate before any two commissioners for the place, then the person so doubly charged, shall, for so much as shall be certified, be discharged in every other parish, or place in *England*.

Not to extend to personal estate in Scotland, &c.

§ 22. This act shall not extend to the inhabitants of *Scotland*, *Ireland*, *Jersey*, or *Guernsey*, for assessing any such personal estate which they, or any to their use, have within those places, towards the said sum hereby authorised to be charged upon any parish or place, in *England*, *Wales*, and *Berwick-upon-Tweed*, and if any person that ought to be taxed by virtue of this act, for his personal estate, shall, by changing his residence, or by any other

fraud or covin, escape from the taxation, and not be taxed, and the same be proved before the commissioners, or any two of them, at any time within one year next after such tax made, such person shall be charged, upon proof thereof, at treble the value of so much as he ought to have been charged at by this act; the said treble value, upon certificate thereof made into the exchequer by the commissioners before whom such proof shall be made, to be levied on the goods, lands, and hereditaments of such persons. 5 G.4. c.15.

§ 23. Every householder shall, upon demand of the assessors, give an account of the names and qualities of such persons as shall lodge in their houses, under the penalty of forfeiting five pounds, to be levied and recovered in such manner as any other penalty in this act mentioned may be levied and recovered.

Penalty on housekeepers not giving an account of their lodgers.

§ 24. The several members of parliament who shall abide within *London* and *Westminster*, and the suburbs of the same, or within the county of *Middlesex*, shall, for or in respect of their ready money or debts, or any other tax which may be laid on their personal estate or persons in respect thereof, be assessed only in the places where such members have their mansion-houses or other places where they most usually reside during the intervals of parliament; and in case any assessor or commissioner shall assess any member contrary hereto, he shall forfeit to the party aggrieved 40*l.*, to be recovered by action, together with full costs of suit.

Members of parliament to be rated at their mansion-houses.

§ 25. Where any person liable to be rated in respect of such personal estate, and inhabiting within the city of *London*, or any other city or town corporate, hath his dwelling-house in one of the parishes or wards therein, and hath any goods, wares, or merchandise in any other parishes or wards within the same, then such person shall be assessed in the parish or ward where he dwelleth, and not elsewhere.

Inhabitants of towns having personal estates in one or more parishes, shall be assessed where they reside.

§ 26. The officers in the receipt of exchequer at *Westminster*, and in other the public offices, upon request to them made by the assessors, shall deliver *gratis*, true lists of all pensions, annuities, stipends, or other annual payments, and of all fees, salaries, and other allowances, payable at the said receipt, or in the said public offices, to any commissioner or officer, for the execution of this act, for the better guidance of the said assessors in the charging of the same; and in all cases where any pensions, annuities, stipends, or other yearly payments, or the fees, salaries, wages, or other allowances or profits charged by this act, shall be payable at the receipt of the exchequer, or at any other public office, or by any of H. M.'s receivers or paymasters, the tax or payment shall and may (in case of non-payment thereof) be detained and stopped out of the same, or out of any money which shall be paid thereupon, or for arrears thereof, and be applied to the satisfaction of the rates and duties not otherwise paid as aforesaid; and the officers in the said exchequer, and other the public offices, shall keep true accounts of all monies stopped, and (upon request) shall give copies of such accounts to the collectors of such monies for the respective parishes or places where the said monies are assessed.

Officers of exchequer, &c. to deliver lists of pensions and annuities when required.

§ 27. And every person assessed for his office or employment, shall be rated and pay in the county, city, or place where the

Officers to pay where employed.

5 G.4. c. 15.

same shall be exercised, although the profits are payable elsewhere: Provided that the master of the rolls, the masters in chancery, six clerks, clerks of the petty bag, examiners, registers, clerks of the inrolments, clerks of the affidavit and subpœna office, and all other the officers of the court of chancery that execute their offices within the liberties of the rolls, shall be there assessed, and not elsewhere: and the said masters in chancery for the time being, and the said six clerks and registers for the time being, shall be commissioners for putting in execution, and shall put in execution this act, within the said liberty, and exercise the powers therein contained: And all annuities, stipends, and pensions payable to any officers in respect of their offices, shall be assessed where such officers are assessed, and not elsewhere; and all other pensions, stipends, and annuities, not charged upon lands, shall be assessed in the parishes where they are payable.

Officers in chancery to be assessed in the rolls liberty.

Offices executed by deputy, the assessment to be paid by him.

§ 28. And where any office is executed by deputy, such deputy shall pay such assessment as shall be charged thereon, and deduct the same out of the profits of such office; and in case of refusal or non-payment thereof, such deputy shall be liable to such distress as by this act is prescribed against any person having any office or employment of profit, and to all other remedies and penalties therein respectively contained.

The royal family not chargeable in respect of annuities.

§ 29. This act shall not charge any of the royal family for any annuities or yearly payments granted to their royal highnesses; but such sums of money, annuities, or yearly payments, and their royal hignesses, and their treasurers, receivers-general, and servants for the time being, in respect of the same, shall be free and clear from all taxes, impositions, and other charges whatsoever: Also this act shall not extend to charge the pensions of any superannuated commission or warrant sea or land officer, or the pensions of widows of sea or land officers slain in the service of the crown; or the revenue of the most noble order of the garter; or the pensions of the poor knights of *Windsor*, payable out of the exchequer only; or to charge a certain pension of 100*l.*, granted by the late King *Charles* the second to the poor clergy of the *Isle of Man*; or to charge the pensions or salaries of H. M.'s pages of honour, or of the officers and persons employed in collecting the tolls and duties payable by virtue of any act of parliament for making, repairing, or maintaining any public roads.

Superannuated sea officers, &c. not chargeable.

Residentiaries not chargeable in certain cases.

§ 30. And whereas the rents and revenues belonging to the residentiaries of the cathedral churches are chargeable to the land tax made perpetual as aforesaid, and in some cases the overplus of the said rents and revenues above such tax, repairs, and other charges, is to go in shares for the maintenance of the said residentiaries, which shares are diminished by the land tax; it is provided, that in such cases the said residentiaries shall not be further chargeable as enjoying offices of profit out of the said rents and revenues.

Pensions to persons who have acted as ministers or residents at foreign courts not liable.

§ 31. Nothing in this act contained shall extend to charge or to authorise the deducting from or assessing any person upon any annuity, pension, or stipend, on account of his having been or acted as a minister or resident at any foreign court.

§ 32. Nothing herein contained in relation to the said several sums of money charged on pensions in respect of public offices

or employments of profit, or other annual payments before described, shall extend to charge or to authorise the deducting from or assessing any person in any case in which the salary, wages, fees, perquisites, or gratuities payable in respect of such office or employment of profit, or in which the annual payment, shall have been specially exempted from taxes by any act of parliament; or in any case in which any salary of any office, or any other annual payment which shall be payable to such person in respect of such office or employment, or of his having held any such office or employment, shall by any order of his majesty in council, or by any warrant under H. M.'s royal sign manual, or by any order of the commissioners of the treasury, have been directed to be paid nett or without deduction; or in any case in which the sums assessed on any such salary, or annual payment shall, by like order, have been directed to be repaid to the persons assessed out of any part of the public revenue of *Great Britain:* Provided that the authority for the payment nett or without deduction of the salary, or annual payment, or the repayment of the duty assessed on the salary, or annual payment aforesaid, shall be certified by some principal officer in the department to which such officer or employment belongs, to be so paid without deduction, or to be repaid out of the said revenue. 5 G.4. c.15. Duties not to be charged on pensions, &c. specially exempted.

§ 33. Provided always, that no stamp duty shall be charged or chargeable for any receipts given by any receiver-general of the land-tax to any collector for payment of money made by virtue of this act. Receipt not chargeable with stamp duty.

Purrett v. *Weeks*, 1 *Str.* 417. At *Taunton* assizes, before *Price* B. The plaintiff was an exciseman, and lived in the county of *Devon*, and executed his office in several parishes in that county, and also in a parish that extended into *Somersetshire*. And the commissioners of that county apprehending they had a concurrent power with the commissioners of *Devon* to tax him for his salary, on account that he executed his office in their county, they taxed him accordingly, and for want of payment distrained. For which trespass was brought; and ruled, that it well lay; for though he ride about to the public houses in that county, yet he must be said to keep his office in the town where he lives and hath his books, and there only he was taxable. Excise-men to be assessed where they reside.

And by stat. 38 *G.* 3. *c.* 5. § 4. The charge upon *real* estates shall be as follows: That the entire sum may be raised, all manors, messuages, lands, and tenements, all quarries, mines of coal, tin, and lead, copper, mundick, iron, and other mines: iron mills, furnaces and other iron work; salt springs, and salt works; all alum mines and works; all parks, chases, warrens, woods, underwoods, coppices, all fishings, tithes, tolls, annuities, and all other yearly profits, and all hereditaments of what nature or kind soever they be within *England*, *Wales*, or *Berwick*, and all persons, bodies politic and corporate, guilds, mysteries, fraternities and brotherhoods, whether corporate or not corporate, having any such manors, messuages, lands, tenements, or hereditaments, or other the premises, in respect thereof shall be charged with as much equality and indifference as is possible, by a *pound rate*, towards the several sums by this act imposed upon such counties, cities, boroughs, towns, or other places, hereby charged therewith, so that by the said rates so to be taxed the full sums hereby appointed 38 G.3. c.5. On real estates

38 G.3. c.5. to be raised, shall be effectually collected; and shall be paid into the exchequer by four quarterly payments.

Tolls. By § 122. Tolls or duties taken on turnpike roads are not rateable.

Deducting land-tax from fee farm and other rents. § 5. It shall be lawful for the landlords, owners, and proprietors of such manors, messuages, lands, tenements, hereditaments, and premises, being charged with a *pound rate* as aforesaid, to deduct, and to keep in their hands, out of every fee-farm rent, or other annual rent or payment, so much of the said *pound rate* taxed upon the said premises, as a like rate for such fee-farm rent, or annual rent or payment, shall by a just proportion amount unto so as such fee-farm rent or annual payment do not amount unto 20*s. per annum*, or more; and all persons who are entitled to such rents or annual payments, are to allow such deductions upon the receipt of the residue of such monies as shall be due to them for such rents or annual payments without any fee.

§ 30. All auditors, reeves, receivers, and their deputies, who audit or receive any fee-farm rents, or other chief rents due to his majesty, or to any person claiming by grant or purchase from the crown, shall allow 4*s.* for every pound of the said rents, and a proportionable rate for any greater sum than 10*s.* to the party paying the same, without fee, upon penalty of 30*l.* to the party aggrieved, to be recovered by action, together with full costs; and if any such auditor, or any deputy, or person acting for such auditor, shall in the account of any reeve, receiver, of otherwise, set *insuper* any tenant or other person, or make him or his estate liable to any distress, forfeiture, or vexation for any sum which ought to be allowed after the rate of 4*s.* in the pound, or shall refuse, neglect, or delay to allow the same, then such auditor, or deputy, or deputy or person acting for such auditor, shall forfeit 100*l.* to the party grieved, to be recovered as aforesaid, and shall be incapable to enjoy his office, or any office of trust under his majesty.

§ 31. But the fee-farm rents, for which a deduction, after the rate of 4*s.* in the pound is intended to be made, are such only as are answerable to his majesty, or have been purchased from the crown by virtue of two acts of 22 & 23 *Car.* 2. (*viz.* 22 *C.* 2, *c.* 6. 22 & 23 *C.* 2. *c.* 24) for the sale of fee-farm rents, and which were not, on or before the 25th of *March* 1693, payable to any college, hospital, reader in any university, or any other person before exempted, provided such deduction do not exceed the sum assessed by virtue of this act upon the whole estate; and the owners and receivers of such fee-farm rents shall, on payment of such rents allow 4*s.* for every 20*s.*, and so in proportion to the party receiving the same.

Charities exempted. Universities; Colleges; Halls; Hospitals. § 25. But nothing herein shall charge any college or hall in *Oxford* or *Cambridge*, or the colleges of *Windsor*, *Eaton*, *Winton*, or *Westminster*, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley*, or any hospital, for the sites of the said colleges, halls, or hospitals, or any of the buildings within the walls or limits of the same; or any master, fellow, or scholar, or exhibitioner of any such college or hall, or any reader, officer or master of the said universities, colleges, or halls, or any masters or ushers of any schools, for or in respect of any stipends, wages,

rents, profits, or exhibitions whatsoever, arising or growing due to them in respect to the said several places or employments: or any of the lands which before *March* 25, 1693, did belong to the sites of any college or hall, or to *Christ's* hospital, St. *Bartholomew, Bridewell,* St. *Thomas* and *Bethlehem* hospitals in *London* and *Southwark,* or to the said corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley;* or shall extend to charge any other hospitals or alms-houses, in respect of any rents or revenues which before *March* 25, 1693, were payable to them, being to be received and disbursed for the immediate use and relief of the poor of the said hospitals and alms-houses only. 38 G.3. c.5.

§ 26. Provided that no tenant by lease or other grants from the said corporation, or any of the said hospitals, or alms-houses, do claim or enjoy any exemption, but all the houses or lands which they hold shall be rated for so much as they are yearly worth, over and above the rents reserved.

§ 27. Also nothing in this act shall discharge any tenant of any of the houses or lands belonging to the said colleges, halls, or hospitals, alms-houses or schools, who by their leases are obliged to pay all rates.

§ 28. And in case any question shall be made, how far any lands or tenements, belonging to any hospital or alms-houses, not exempted by name out of this act, ought to be assessed, the same shall be determined by the commissioners, or three of them, upon appeal at the day appointed for hearing and determining appeals.

Hospitals.

Harrison v. *Bulcock and others,* 1 *H. Blac.* 68. In an action of trespass in the common pleas, it was determined that a house within the limits of an hospital, appropriated to an officer of the hospital for the time being, is not assessable to the land tax.

Alms-houses.

§ 29. In general all such lands, revenues, or rents belonging to any hospital, or alms-house, or settled to any charitable or pious use, as were assessed in the 4 *W.* & *M.* shall be liable; and no other lands, revenues, or rents then belonging to any hospital, or alms-house, or settled to any charitable or pious use, shall be charged, taxed or assessed.

[But lands given to charities since the 4 *W.* & *M.* shall not be exempted, because the sums upon the several divisions being now charged as they were in that year, if any lands not then exempted should now, by being appropriated to charities or otherwise become exempted, this would lay a greater burden upon all the rest. But charities then exempted do lay no greater burden upon the rest now, because they were not charged in the general sum upon the division at that time. And such charities were exempted all along in the subsidy acts before.]

Poor exempted.

§ 30. No poor person shall be charged with or liable to the pound rate, whose lands, tenements, or hereditaments are not of the full yearly value of 20*s.* in the whole.

In what places or divisions persons shall be assessed.

§ 36. And all places, constablewicks, divisions, and allotments, shall be assessed in such county, hundred, rape, wapentake, constablewick, division, place, or allotment, as they have been usually assessed in.

§ 53. Every person who shall be assessed in respect of any manors, messuages, lands, or tenements, or other premises accord-

38 G. 3. c. 5. ing to the former clauses of this act, shall be assessed for the same in the places where they lie, and not elsewhere.

Tenants to pay the tax. § 17. The several tenants of all houses, lands, tenements, and hereditaments, rated by virtue of this act, are to pay such sum as shall be rated upon such hereditaments, and to deduct out of the rent so much of the said rate as the landlord ought to pay; and the said landlords, mediate, and immediate, are to allow such deductions, upon receipt of the residue of the rents.

And why. In the case of *Rex* v. *Mitcham, Cald.* 276. (*a*) Ld. *Mansfield* said, That undoubtedly the rate ought to be charged upon the occupier, for although the landlord is the debtor, the rate is pointed at the occupier, the parish cannot tell who is the landlord, or who has a rent charge; it is upon the occupier the officer of government takes his remedy, and though the landlord is directed to allow the sum paid out of his rent, the tenant is to be considered as the person first liable, the parish has nothing to do with transactions between landlord and tenant.

§ 35. Nothing in this act shall alter or make void any contract whatsoever between landlord and tenant, or any other persons touching the payment of taxes.

§ III. The Third Meeting: Signing the Assessment with Warrant to collect.

Penalty on the assessor not appearing. By stat. 38 *G.* 3. *c.* 5. § 8. 19. The assessor, after he is appointed, neglecting or refusing to serve, or not appearing at such third meeting, without lawful excuse, to be proved on oath of two witnesses, or not performing his duty, shall forfeit to the king any sum not exceeding 40*l.*, to be levied as the rates, and charged to the receiver-general.

Duplicates to be delivered in. By stats. 20 *G.* 3. *c.* 17. § 3. 38 *G.* 3. *c.* 5. § 8. At such third meeting the assessors shall deliver three duplicates of the assessment in writing, signed by them, to the commissioners.

Collectors' names to be returned. And by stat. 38 *G.* 3. *c.* 5. § 8. shall then also return the names of two or more able and sufficient persons, living within the parishes or places where they shall be chargeable respectively to be collectors; for whose paying in to the receiver general in manner hereinafter mentioned, such monies as they shall be chargeable withal, the parish or place wherein they are so employed shall be anwerable.

Collectors to give security. § 21. Which collectors shall, if required, give security to three commissioners, equal to the amount of the whole rate on the respective districts, for paying to the receiver-general such money as shall come to their hands: on failure whereof they may appoint two or more persons who shall give such security; if none are able or willing, then the persons first named shall stand.

Signing the duplicates. § 8. Then three or more commissioners shall sign and seal the said three duplicates, and deliver one of them to the collectors (whom they shall nominate and appoint) with warrant to the said collector to collect the same. (C).

(C.)

Appointing the appeal day. § 8. And the commissioners shall at the same time give notice to the collectors, at what time and place the appeals of any per-

(*a*) See this case more fully, and also several others on the subject, post, Poor, (*Settlement by Rates.*) Vol. iv.

sons aggrieved, by being over-rated by the assessors, may be heard and determined; which day of appeal shall be at least 30 days from the time of signing and sealing and delivering the duplicate to the collectors. 38 G. 3. c. 5.

See 42 *G.* 3. *c.* 116. § 180, 181, 182. *ante.*

§ IV. Fourth Meeting: The Appeal.

By stat. 38 *G.* 3. *c.* 5. § 8. Every collector shall, within ten days after the receipt of the duplicates, cause public notice to be given in every parish church or chapel within his district immediately after divine service on the *Lord's* day (if any such divine service shall be performed therein within that time,) of the time and place so appointed by the commissioners for hearing and determining appeals; And shall also, on the same day, cause the like notices to be fixed in writing on the door of such church or chapel, that all persons over-rated may know when and where to appeal. Notice of the appeal day to be given in the church, &c.

§ 8. The collectors are, upon the application of any person who shall think himself over-rated, to permit such person or his proper representative, to inspect the duplicates of such rates, at all seasonable times in the day, without fee. Duplicates may be inspected.

§ 8. Every person intending to appeal shall give notice thereof in writing to one or more assessors, that they may attend, if they think fit, to justify the assessment. Appellant to give notice in writing.

§ 23. In case of any controversy in apportioning the assessments which concern any commissioner, such commissioner concerned therein in his own right, or in the right of any other for whom he shall act as steward, agent, attorney, or solicitor, shall have no voice, but shall withdraw until it be determined, on pain of any sum not exceeding 20*l.* to be levied and paid as the other fines. Commissioner interested to withdraw.

§ 84. Where it appears by proof upon oath that lands are overcharged by the pound rate, the commissioners at the appeal may make abatement, and cause the sum abated to be re-assessed upon the whole hundred, lathe, wapentake, or other division, where the overcharges happen, although the pound rate of 4*s.* in the pound be thereby exceeded; or upon any person therein undercharged; so that the whole sum charged on such division be fully answered. Relief in case of overcharge.

§ 8. And appeals once heard and determined on the appeal day shall be final, without any farther appeal upon any pretence whatsoever; and (§ 23.) without further trouble or suit in law, either in the K. B. or any other court. Appeal determined, final.

By stat. 20 *G.* 3. *c.* 17. § 3. If the name of the owner of any messuage, land, or tenement, entitled to vote for a knight of the shire, shall not appear to be inserted in the assessment, he may, on giving notice in writing to one of the assessors, appeal to the said commissioners; who shall amend the assessment, as they shall see cause. And (§ 10.) if any person shall think himself aggrieved by the determination of the commissioners, he may appeal to the justices at the next sessions, giving ten days' notice thereof to one of the commissioners who signed the duplicate, and to one of the assessors of the place where the estate lies; and the sessions may award costs to either of the parties, and by their order or warrant levy the same by distress. And the commissioners shall cause one of 20 G. 3. c. 17. Particular appeal with respect to parliamentary voters.

20 G. 3. c. 17. the duplicates so amended to be returned to the assessors, to be by them delivered to the high constable, and by him to the clerk of the peace, to be had recourse to in his possession, in cases of election of knights of the shire.

42 G. 3. c. 116. Persons entitled to vote at elections for lands whereon the land tax hath been redeemed, may vote without shewing that the same have been assessed to the land tax.

By stat. 42 *G.* 3. *c.* 116. § 200. Every person, who shall tender his vote at the election of any knight or knights of the shire, or other member or members to serve in parliament within that part of *G. B.* called *England*, or the principality of *Wales*, in respect of any messuages, lands, or tenements of the quality and value which would by law entitle him to vote at such election, the land tax charged whereon shall have been redeemed or purchased, shall, from and after the passing of this act, be entitled to vote at any such election as aforesaid, without being compelled to shew that such messuages, lands, or tenements, have been assessed to the land tax, upon proving to the satisfaction of the returning officer, on oath or otherwise, that such land tax hath at any time previously to such election been redeemed or purchased, and the said messuages, lands or tenements, become exonerated therefrom, under the provisions of the several acts for the redemption of the land tax.

51 G. 3. c. 99. Registry of purchase of land tax not necessary to entitle to vote at elections.

By stat. 51 *G.* 3. *c.* 99. in order to entitle any person to vote at an election for a member of parliament, in respect of land tax purchased, it shall not be necessary to have the same or any memorial or certificate of the purchase thereof registered, as other fee farm rents and annuities, or a memorial of the grant thereof, are required by law to be registered before any person can vote for electing a member of parliament in respect thereof.

§ V. Collecting.

38 G. 3. c. 5. Demand.

By stat. 38 *G.* 3. *c.* 5. § 9. The collectors shall levy and collect the rates charged, and are to demand all the sums so taxed of the parties themselves as the same shall become due, if they can be found, or else at the place of their last abode, or upon the premises charged.

Distress.

§ 17. If any person shall refuse or neglect to pay to the collector on demand, he may levy the same by distress and sale of the goods of the person so neglecting or refusing: (D. E. F.)

(D. E. F.)

§ 17. And where any refusal, neglect, or resistance shall be made, he may (calling the constable to his assistance) break open *in the day time* any house, and by warrant of two commissioners, any chest, trunk, box, or other thing, where any such goods are.

§ 17. Or he may distrain upon the messuages, lands, tenaments, and premises; and the distress so taken may keep for four days, at the charges of the owner; and if not paid in four days, then the distress shall be appraised by two inhabitants or other sufficient persons, and sold by the collector, returning the overplus immediately (if any be) over and above the tax and charge of taking and keeping the distress.

§ 17. If any difference shall arise upon taking the distress, the same shall be determined and ended by two commissioners.

Collectors may levy by distress in case of refusal of payment.

§ 17. Reciting that doubts had arisen touching the authority of collectors to distrain for non-payment of the land tax, under the warrants usually granted by commissioners at the time of their appointments, it is enacted, that if any persons shall refuse or ne-

glect to pay any sum whereat he is assessed, upon demand by the collector, according to the precept to him delivered by the commissioners, such collector may levy the sum assessed by distress and sale of the goods and chattels of such person, or distrain upon the messuages, lands, tenements, and premises so charged, *without any further authority from the commissioners for that purpose.* 38 G.3. c.5.

§ 17. If any person shall refuse or neglect to pay his assessment for ten days after demand, or shall convey his goods or other personal estate, whereby the money cannot be levied; in every such case, two of the commissioners are, by warrant under their hands and seals, to commit such person (except a peer or peeress of *G. B.*) to the common gaol, there to remain without bail or mainprise, until payment be made of the money assessed, and the charges for bringing in the same be paid, and no longer. Commitment for want of distress.

§ 40. In case any lands or houses, in any parish, place, or constablewick, shall be unoccupied, and no distress can be found on the same, by reason whereof the parish is forced to make good the tax, it shall be lawful at any time after, for the collectors, contables, or tithingmen, to enter and distrain upon the lands or houses, where there shall be any distress thereupon to be found; and the distress (if not redeemed within four days, by payment of the tax, and charges of the distress) to sell, returning the overplus; and the said collector, constable, or tithingman, is to distribute the money raised proportionably to the parties who contributed to the tax of the unoccupied lands or houses. Lands unoccupied.

§ 41. Also where any woodlands shall be assessed, and no distress can be had, it shall be lawful for any collector, constable, headborough, or tithingman, by warrant under the hands and seals of two commissioners, at seasonable times of the year, to cut and sell to any person so much of the wood (timber trees excepted) as shall pay the assessment, and the charge incident thereunto; and it shall be lawful for the person to whom such wood shall be sold, to fell, cut down, dispose, and carry away the same, rendering the overplus (if any be) to the owner. Tax on woodlands, how to be levied.

§ 42. When any tax shall be charged on any tithes, tolls chargeable by this act, profits of markets, fairs, or fisheries, or any other annual profits, not distrainable, in case the same shall not be paid within six days after demanded, it shall be lawful for the collector, constable, or other officer thereunto appointed, by warrant under the hands and seals of two commissioners, to seize, take, and sell, so much of the said tithes, wheresoever they can be found, tolls, or other profits so charged, as shall be sufficient for levying the tax, and all the charges occasioned by non-payment thereof, rendering the overplus (if any) to the owner. Tax on tithes, tolls, and other annual profits, how to be levied.

§ 125. The collectors shall demand the entire sum which shall be assessed for the whole year on such fairs, and the booths, stalls, and standings in the same, from the parties themselves who shall set to sale any goods or merchandises in the said fairs, booths, stalls, or standings, or otherwise occupy the same, if they can be found, or else upon the premises charged with such assessments, at any time within seven days after the first proclaiming of such fair; and in default of payment thereof, shall levy the sum assessed by distress and sale of all the goods found in the said booths, stalls, or standings, in such manner as is directed to be done in other cases.

38 G. 3. c. 5. § 126. And the said collectors shall have all such powers of making such distress as is hereby given to collectors in other cases; and the tenants of all such booths, stalls, and standings, are to pay such sums as shall be rated thereon, and deduct the same out of the rent payable to the landlords.

28 G. 3. c. 2. Commissioners to examine whether the sums assessed be duly paid. By stat. 28 *G.* 3. *c.* 2. § 22. At the expiration of the respective times prescribed for the full payment of the said quarterly assessment, any two commissioners within their division shall call before them the collectors within each respective division, parish, or place, and examine them upon oath, and assure themselves of the full payment of the sums charged upon such division, parish, or place, and of the due return of the same to the receiver-general, and by him into the exchequer, to the end there may be no failure in the payment of any part of such assessment. And in case of failure in the premises, the said commissioners are to cause the same to be forthwith levied and paid according to the true intent and meaning of this act.

38 G. 3. c. 5. Arrears may be levied. And by stat. 38 *G.* 3. *c.* 5. § 120. The commissioners by this act appointed are empowered to cause the monies in arrear under the former acts to be assessed, re-assessed, levied and answered, as fully as any commissioners appointed by former acts might have done; and the said assessors, collectors, and receivers, shall assess, re-assess, levy, receive, and answer the several arrears, in such manner as in this act they are empowered, with respect to the sums by this act charged.

§ VI. Collector paying to the Receiver-general.

38 G. 3. c. 5. Collector to pay to the receiver. By stat. 38 *G.* 3. *c.* 5. § 10. 12. The collector shall pay the money received to the receiver-general or his deputy, quarterly, on or before *June* 24. *Sept.* 29. *Dec.* 25. and *March* 25. at such time and place as two commissioners shall appoint; so as the whole sums due be answered by the respective quarterly pay days; and so as the collector shall not be obliged to travel above ten miles from his usual place of abode.

Receiver general to attend either personally or by deputy. § 85. The receiver-general shall appoint proper persons (for whom he shall be answerable) to be his deputies, to receive from the sub-collectors the rates by them collected; and the same receivers-general are to appoint so many of such deputies in their respective counties, that no sub-collector shall be obliged to travel above ten miles from his place of abode for payment of the monies collected: and if any such receiver-general shall refuse or neglect to appoint such deputies, or shall wilfully neglect to attend by himself or deputy at the time or place by him appointed for his receipts, such receiver-general shall forfeit 100*l.*, the one moiety to H. M., and the other moiety to him that shall sue for the same, in any court of record at *Westminster*.

To give receipts. § 10. The receiver-general, or his deputy, shall give a receipt *gratis*, which shall be a sufficient discharge to the collectors.

Receiver to deliver lists of money received. § 110. And at every time and place appointed by the commissioners for the collectors to pay the money to the receiver-general, he shall deliver a list of the money received by him to such person as two or more commissioners shall under their hands appoint; on pain of forfeiting a sum not exceeding 20*l.*, to be paid into the exchequer, as the fines on assessors and collectors.

§ 14. The collectors shall have 3*d.* in the pound for collecting and giving receipts, which they may detain out of the last payment. 38 G. 3. c. 5. Collector to have 3d. a pound.

§ 81. If any collector of any parish or place shall keep in his hands any part of the money by him collected for any longer time than is by this act directed (other than the allowance made unto him), or shall pay any part thereof to any person other than the receiver-general or his deputy; such collector shall forfeit not exceeding 40*l.* nor less than 5*l.*, to be levied by distress and sale, as is directed in like cases of distress. Collector making default.

§ 20. Also if any collector shall refuse or neglect to pay any money by him received, or shall detain in his hands any money received, the said commissioners or two of them, in their divisions, are empowered to imprison the person, and seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of such collector, to him belonging, or which shall descend or come into the hands or possession of his heirs, executors, or administrators, wheresoever the same can be discovered or found; and the said commissioners are empowered to appoint a time for a general meeting of the said commissioners, and there to cause public notice to be given of the place where such meeting shall be appointed six days before such general meeting; and the commissioners present in such general meeting, in case the monies detained by such collector be not paid according to the directions of this act, shall sell and dispose of all such estates seized and secured, or any part of them, to satisfy into the hands of the receiver-general, or his deputy, the sum which shall be detained.

§ 111. And where any persons shall seize the goods or chattels of any collector, his heirs, executors or administrators, on non-payment of any money, it shall be lawful for such person making such distress, out of the money arising by the sale, (such sum for which distress shall be made being first thereout satisfied,) to keep in his hands, for his own use, so much money as the commissioners, or two of them (who ordered such distress) shall in their discretion judge reasonable, for making such distress, as also for the charges in keeping thereof, or otherwise relating thereto, rendering the overplus (if any) to the owner.

§ 117. It shall be lawful for the commissioners (other than such as have been collectors of any land tax,) or the major part of them present at any public meeting, to issue their precepts to all such collectors who are or shall be suspected by such commissioners to have received any sums of money under any act of parliament, which at any time within seven years next before the beginning of this session, have been made for granting a land tax, jointly with any other tax, and to have converted the same to their own use, and if such collectors be dead, then to issue such precept to their heirs, executors, or administrators, thereby requiring all such collectors, their heirs, executors, or administrators to appear before the said commissioners, at the time and place in such precept prefixed; and upon their appearances, or making default (after summons delivered to them, or left at the usual places of their abode,) the said commissioners shall enquire by examination of witnesses upon oath or other lawful means, and determine what sums of money the said collectors did

18 G.3. c.5. receive, or fraudulently convert to their own use; and thereupon issue their warrants and orders, requiring all such collectors, their heirs, executors, and administrators, in whose hands the said commissioners shall find any such money to be remaining, or who shall be chargeable therewith, to pay the same to H. M.'s use, in manner following; that is to say, in case there be any deficiency remaining upon any such parish or township of the *quota* charged thereupon by the act whereby the money found as aforesaid was collected, then such deficiency shall be satisfied, in the first place, out of the monies so recovered, or the same monies so far as they will extend shall be applied towards the making good of such deficiency, and in all cases where there is no deficiency, or there shall be an overplus more than sufficient to discharge such deficiency, the said commissioners shall, by their said order, require the said money so found, or the overplus thereof, to be paid to the receiver-general towards discharging so much of the proportions to be charged on such parish or township by this act.

§ 119. If any collector shall neglect or refuse to pay any sum by him received, or shall detain in his hands any money by him received, and not pay the same as the act directs, two commissioners may imprison him, or may seize his estate, as well freehold as copyhold, and all other estates, both real and personal, to him belonging, or which shall come to his heirs, executors, or administrators; which said commissioners may appoint a general meeting of the commissioners, and shall give public notice thereof at least six days before; and the commissioners at such general meeting may sell such estates or any part thereof for payment.

§ 119. The commissioners at any general meeting may summon collectors who have fraudulently converted land tax money to their own use, and cause them to pay the same, to make up the deficiency, if there is any in that place; and if there is no deficiency, then to discharge so much of the proportion charged on such place, as that money doth amount to: And if such collector shall neglect or refuse so to pay, the commissioners may imprison him, and seize and sell his estate for payment.

53 G.3. c 142. Penalty on collectors refusing to attend commissioners and not answering lawful questions.

And by stat. 53 *G.* 3. *c.* 142. § 7. If any collector, being duly summoned or called before the commissioners, shall refuse to attend them, or shall not answer all such lawful questions as shall be demanded of him by them touching the execution of his office as collector, or shall refuse or neglect to produce to them the certificate of assessments, accounts, or vouchers of the receipts or payments of the said duties by him as such collector, he shall forfeit fifty pounds, to be charged upon him in any assessment to be made upon him under and by virtue of the said recited acts, and to be recovered as such assessments may be recovered over and above any forfeiture or disability that may be incurred by virtue of any act or acts for detaining monies of the said duties in his hands contrary to such act or acts; and whenever any monies of the said duties shall be detained in the hands of any collector, or any penalty imposed on any collector shall remain unpaid, and cannot be recovered under the warrant or authority of the respective commissioners, or the said commissioners shall neglect to issue such warrant, then such part thereof as cannot be so recovered, which shall have arisen from the said duties, shall be recoverable

as a debt upon record to his majesty, with all costs and charges attending the same; and such part thereof which shall arise from any penalty as aforesaid, may be recovered by action or information, as penalties may be recovered by the said recited acts or either of them, with full costs of suit; and the sum so recovered shall be paid to the receiver-general, in aid of the parish or place answerable for the same. 53 G.3. c. 142.

By stat. 38 *G.* 3. *c.* 5. § 105. In case there be any failure of raising or paying the several sums charged upon any county or place, the receiver-general shall certify under his hand to the barons of the exchequer, the particular city, town, parish or place, where such failure hath happened, together with the names of the assessors and collectors, and the several other persons charged with the said tax; which place, or any person charged with the said tax within such place, shall be liable to process for such neglect. 38 G.3. c.5. Receivers general to certify defaults.

But by stat. 42 *G.* 3. *c.* 116. § 178. No receiver, his heirs, executors or administrators, shall, in their account of the monies to be raised for any year after the 25th day of *March*, 1801, certify for any of the said monies which shall be in arrear, unless such account shall be declared and passed in the exchequer within two years after the commencement of the year (such year commencing from and after the 25th day of *March*) in which such monies shall be to be raised, but all such monies in arrear shall remain a debt upon such receiver. 42 G.3. c.116.

And by stat 38 *G.* 3. *c.* 5. § 43. If any receiver-general shall return into the court of exchequer any sum of money to be in arrear, after the same shall have been received, either by such receiver-general or his deputy, or shall cause any person or place to be set *insuper* in the said court, for any sum so received; such receiver-general shall be liable to pay to every person damaged by such unjust return or setting *insuper*, treble the damage thereby occasioned, to be recovered by action, bill, plaint, or information, and shall also forfeit to his majesty double the sum unjustly returned, or caused to be set *insuper*. 38 G.3. c.5.

And by § 18. In case the proportion set by this, or any former act, shall not be fully assessed and paid; or if any of the said assessments shall be imposed upon any person not of ability to pay, or upon any empty or void house or land, or that through any wilfulness, neglect, mistake, or accident, the said assessment happens not to be paid to the receiver-general or deputies; then and in all such cases the commissioners, assessors, and collectors, are to re-assess all such sums upon the divisions wherein such deficiency shall happen, or parishes therein, as to the commissioners, or such number of them as may cause the first assessment to be made, shall seem agreeable to equity and justice; the said new assessment to be collected in such manner as other assessments.

Where the commissioners under certain statutes of land tax, assessed taxes, &c. refused to re-assess the inhabitants, &c. upon default of the collector, unless indemnified, being doubtful as to their authority so to do; the Court of Exchequer held, that the words of stats. 38 *G.* 3. *c.* 5. § 18.; 43 *G.* 3. *c.* 161. § 56.; and 46 *G.* 3. *c.* 65. § 189. were large enough to impose this duty upon them, the deficiency arising from the neglect of the collector. They, therefore, made absolute the rule for an order in the nature of a *mandamus*, and that service on the clerk of the commissioners Re-assessment on default of collector.

should be deemed good service. *In re Inhabitants of Wootton, 6 Price*, 103.

The court also held, that there can be no limitation of the Crown in matters of public revenue. *S. C.*

42 G.3. c.116. And by stat. 42 *G.* 3. *c.* 116. § 177. So long as the duplicate of the land tax charged upon any parish or place, shall, under the provisions of stat. 38 *G.* 3. *c.* 5. § 8. and of this act, be required to be delivered to any receiver-general, it shall be lawful for such receiver-general, upon the receipt of the whole assessment of the county, riding, or place, in case he shall have received such duplicates as aforesaid, and the same shall be returned to the office of the remembrancer of the exchequer pursuant to the directions of the last act, to allow to the clerks who shall have delivered such duplicates 1½*d.* in the pound, as well upon the amount of the land tax which shall have been redeemed, as also upon so much as may remain chargeable; provided that it shall be lawful for the commissioners of the treasury, or three of them, whenever they think fit, to order that the said allowance shall cease to be paid for so much of the land tax as shall have been redeemed.

§ 112. And no receiver shall return any place in arrear after two years at farthest, but the same shall be a debt on him and his securities.

§ VII. Receiver to pay into the Exchequer.

38 G.3. c.5. Receiver robbed. By stat. 38 *G.* 3. *c.* 5. § 121. No receiver-general, or any of his agents, shall maintain an action against the hundred, on account of being robbed on the king's highway of any of the said monies, unless they be together in company, and in number three at the least, to attest the truth of their being so robbed.

3 G.4. c.88. Receiver general not required to travel in company with more than one person. But by stat. 3 *G.* 4. *c.* 88. § 10. It is enacted that no receiver-general, or his deputy, shall be required to travel in company with more than one person on each receipt; and such receiver-general or his deputy so travelling, shall have the same remedies and advantages in his protection on his said receipt, as if he had travelled in company with two or more persons, in the manner directed by the acts relating to the land and assessed taxes.

38 G.3. c.5. Paying into the exchequer. By stat. 38 *G.* 3. *c.* 5. § 13. And the receiver-general within 20 days after the receipt, shall pay the money into the exchequer.

§ 81. Which if he shall pay otherwise than into the exchequer, or not within the time limited, he shall forfeit 500*l.* to him who shall sue.

§ VIII. Duplicates to be transmitted. (G.)

38 G.3. c.5. Duplicates to be transmitted to the receiver-general, and into the exchequer. By stat. 38 *G.* 3. *c.* 5. § 8. The commissioners on or before *Aug.* 8. or in 20 days after (all appeals being first determined), shall cause to be delivered to the receiver-general or his deputy a schedule or duplicate in parchment under their hands and seals, containing the whole sum assessed upon each parish or place, and also the christian names and surnames of the respective assessors and collectors, and shall transmit a like schedule or duplicate into the king's remembrancer's office in the exchequer; for which

the remembrancer, or his deputy, shall give a receipt *gratis*, on pain of 10*l*. 38 G.3. c.5.

§ 8.;—39 *G.* 3. *c.* 3. § 5. In the schedules to be transmitted into the king's remembrancer's office, the commissioners shall distinguish and set down the gross sum charged in any division for double taxes, that it may be known how much the double taxes amounted to in such division.

To the clerk of the peace.

By stat. 18 *G.* 2. *c.* 18. § 4. it is enacted, that the commissioners, or three of them, shall sign and seal a duplicate of the copies of the assessments to be delivered to them by the assessors, after all appeals determined, and cause the same to be delivered to the clerk of the peace, to be kept amongst the records, and inspected by any person without fee. For the method of proceeding on neglect, see Parliament, *post*.

By stat. 20 *G.* 3. *c.* 17. § 1. (except in certain cases enumerated in § 2.) "no person shall vote for electing of any knight or knights "of the shire to serve in parliament, within that part of *G. B.* "called *England*, or the principality of *Wales*, in respect of any "messuages, lands, or tenements, which have not, for six calendar "months next before such election, been charged or assessed, (*a*) "towards some aid granted, or to be granted to H. M., his heirs "or successors, by a land tax, (in case any such aid be then "granted and assessable), in the name of the person or persons "who shall claim to vote at such election for or in respect of any "such messuages, lands, or tenements, or in the name of his or "their tenant or tenants actually occupying the same as tenant or "tenants of the owner or landlord thereof."

See stat. 42 *G.* 3. *c.* 116. § 200, *ante*, p. 196.

The stat. 53 *G.* 3. *c.* 142. § 2. provides that the commissioners shall cause to be made two duplicates of every assessment, one to be sent to the receiver-general of the county or place, the other to the office for taxes; and if the clerk to the commissioners do not make out and deliver the duplicates within the appointed time, and as directed, or wilfully make any false entry, or omit any sum, he shall forfeit 100*l*. to the king, to be recovered as other penalties are recoverable by the said recited acts. 53 G.3. c.142

38 G.3. c.5. Commissioners' clerks to have 1½*d*. in the pound.

By stat. 38 *G.* 3. *c.* 5. § 14. The commissioners' clerks, for their trouble in writing the assessments, duplicates, and copies, and all warrants, orders, and instructions relating thereunto, shall have 1½*d*. in the pound, to be paid by the receiver-general, according to the warrant of two commissioners.

Clerks removing or dying.

§ 15, 16. And on the death or removal of the commissioners' clerks' into whose custody the duplicates of the several books of assessments, minute books, and other books and papers relating to the land tax have been delivered; such clerks so removed, or the executors or administrators of such clerk dying, shall, within one calendar month after notice in writing signed by three or more commissioners, or a true copy thereof given or left at the usual place of abode of such person or persons, deliver up all such books and papers to such person as the said commissioners shall by such notice appoint; on pain of 50*l*. with full costs; half to the receiver-general in aid of the land tax, and half to him who shall sue.

(*a*) A person excused his land tax through poverty, has been admitted to vote, 2 *Peckwell's Election Cases*, 117.

§ IX. General Penalty on Officers not doing their Duty.

38 G. 3. c. 6. General penalty.

By stat. 38 *G.* 3. *c.* 5. § 19. If any assessor, collector, or other person, shall wilfully neglect or refuse to perform his duty or shall be guilty of fraud or abuse, three or more commissioners may fine him not exceeding 40*l.*, which shall not be taken off, but by a majority of the commissioners who imposed it; to be levied by warrant of the said commissioners, by distress and sale; in default of distress (if not a peer) to be committed to prison by two commissioners till payment.

To be paid to the receiver-general.

§ 19. And all fines shall be paid to the receiver-general, and paid by him into the exchequer, and shall be inserted in the duplicates to be transmitted into the office of the king's remembrancer.

Other penalties are annexed to the several offences.

§ X. Indemnity of Officers in doing their Duty.

Officers liable to no penalties but those of the act.

By stat. 38 *G.* 3. *c.* 5. § 48. No commissioner, assessor, or collector, shall be liable to any other penalties than those inflicted by the act.

Treble costs.

§ 39. And persons sued for any thing done in the execution hereof may plead the general issue, and have treble costs.

Note. The business of the commissioners of the land tax in relation to the duties upon Houses, Windows, Horses, Carriages, and Servants, are treated of under title Taxes. Vol. V.

A.

A. Precept to the High Constable to return Assessors.

Westmorland. } To *J*—— *B*—— gentleman, high constable of the East Ward within the said county.

WE the commissioners of the land tax for the said county whose names are hereunto set and seals affixed, do hereby require you forthwith, upon the receipt hereof, to issue out your warrants to all the petty constables within your said ward, in the form or to the effect hereunder following; that is to say,

Westmorland, East Ward. } To the constable of ——

BY virtue of a precept from the commissioners of the land tax for the said county to me directed, you are hereby required forthwith to give notice to the last collectors of the said duty within your constablewick, that they and every of them do personally appear before the said commissioners at —— *in* —— *in the said county, on* ——*, the* —— *day of* —— *at the hour of* —— *in the forenoon of the same day, in order to be appointed assessors of the said duty for this present year, and at the same time to receive their charge, how and in what manner to make their assessments, and otherwise how to proceed in the execution of their said office. And be you then there, to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand the* —— *day of* —— *in the year of our Lord* ——

J—— B——, *constable.*

And this you the said high constable are in no wise to omit, on the peril that shall ensue thereof. Given under our hands and seals the —— day of —— in the year of our Lord ——.

B. Appointment of Assessors of the Land Tax, with their Charge. B.

Westmorland. *By virtue of an act for granting an aid to his majesty by a land tax not exceeding four shillings in the pound for the present year, We the commissioners of the said duty for the county aforesaid, do hereby nominate and appoint* A. S. *to be assessor of the said duty within the township of* W. *in the county aforesaid. And we do hereby require you the said assessor to make your assessment for the same by an equal pound rate upon all manors, messuages, lands and tenements, all quarries, mines of coal, tin, and lead, copper, mundick, iron and other mines, iron mills, furnaces, and other iron works, salt springs, and salt works, all alum mines and works, all parks, chases, warrens, woods, underwoods, coppices, all fishings, tithes, tolls, annuities, and all other yearly profits, and all hereditaments whatsoever, which have not by the several acts of parliament relating to the redemption of the land tax, been exonerated from the said land tax, and to charge the same with as much equality and indifference as possible, by a pound rate, to make up such part of the said land tax as still remains unredeemed and payable in your said township: provided that no poor person shall be charged with or liable to the pound rate, whose lands, tenements, or hereditaments are not of the full yearly value of twenty shillings in the whole. And we do also require you to insert in the certificate of your said assessment the whole of the land tax charged on your said township, (notwithstanding the discharge of any part thereof,) so long as any part of the proportion of land tax charged on your said township shall remain payable either to his majesty or to any purchaser thereof. And you are required to make out three duplicates of your said assessment in writing, and to sign the same with your name: and one of the said duplicates, or a fair copy thereof, you are to cause to be put upon the door of the church or chapel of your said township, at least fourteen days before delivering the said assessment to us; and the said three duplicates, together with the names of two or more able and sufficient inhabitants to be collectors, you are to deliver unto us at ———— in ———— in the county aforesaid, on ———— the ———— day of ———— at the hour of ———— in the forenoon of the same day. And you are to give notice to the said persons to be by you returned as collectors, that they also do appear at the same time and place to receive their appointment and charge. And the form according to which you shall make out your said assessment shall be in the manner of that which is hereunto annexed.*

Given under our hands and seals the ———— day of —— in the year of our lord ————

County of W. to wit. For the Township of —— in the said county.	An assessment made in pursuance of an act passed in the —— year of his majesty's reign, for granting an aid to his majesty by a land tax, to be raised in *Great Britain* for the service of the year 182—.

Names of proprietors.	Names of occupiers.	Sums assessed.
A. B.	Himself.	—— — —
A. B.	C. D.	—— — —
C. D.	G. H.	—— — —
J. H. and L. M.	N. O.	—— — —
P. Q.	R. S. and T. W.	—— — —

Signed this —— day of —— 18—.
By us,

A. B. }
C. D. } Assessors.

[*And if any person or persons shall hold or occupy messuages, lands, or tenements, belonging to different owners, the same shall be separately and distinctly rated in such assessments, that the proportion of the land tax to be paid by each separate owner respectively, may be known and ascertained.*]

C.

C. Appointment and Charge of the Collectors of the Land Tax, with Warrant to collect.

Westmorland. *WE the commissioners of the land tax for the said county, whose names are hereunto set and seals affixed, do hereby nominate and appoint —— to be collectors of the land tax for the township of —— in the said county for the present year; and do hereby empower them to demand, collect, and receive the same. And you the said collectors are hereby required, within ten days after your receipt hereof, to cause public notice to be given in the church or chapel immediately after divine service on the Lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessment for the same, will be finally heard and determined by the said commissioners, at —— in —— in the said county, on the —— day of —— now next ensuing. And if after the time of such determination, any person shall refuse or neglect to pay the same upon demand, you are hereby required to levy the same by distress and sale, or forthwith to give notice unto us thereof, that such further proceedings may be had therein as to law doth appertain. And the same when collected you are hereby required to pay unto the receiver-general, or his deputy, at the times and places hereafter following; that is to say — deducting out of the last payment thereof 3d. for every pound by you collected for your trouble in collecting and giving receipts. Given under our hands and seals, the —— day of —— in the year of our Lord ——.*

D. Complaint to the Commissioners of Land Tax not paid. D.

Westmoreland. } *A. C. and* B. C. *collectors of the land tax for the division of* ——— *in the said county, complain to us, two of the commissioners of the land tax for the said county, that* A. O. *of* ——— *in the said county, yeoman, refuseth (after demand by the said collectors duly made) to pay his rate or assessment to the land tax in the said divisions; and thereupon they pray that justice may be done.*

Before us
D. E. A. C.
F. G. B. C.

E. Summons thereupon. E.

Westmoreland. { *To* A. O. *of* ———, *in the said county yeoman.*

WE whose names are hereunto set and seals affixed, two of the commissioners of the land tax for the said county for this present year, do hereby summon you personally to appear before us at the house of ———, *in* ———, *in the said county, on* ———, *the* ——— *day of* ———, *at the hour of* ———, *in the* ——— *noon of the same day, to shew cause why you refuse to pay your proportion of the rate or assessment towards the land tax within the division of* ———, *in the said county. Given under our hands and seals the* ——— *day of* ——— *in the year of our Lord* ———.

F. Distress. F.

Westmoreland. { *To* A. C. *and* B. C. *collectors of the land tax for the division of* ——— *in the said county.*

WHEREAS in and by a rate and assessment made and signed according to the statute in that case made, A. O. *of* ——— *in the said county, yeoman, is rated and assessed towards the land tax in the said division for this present year, the sum of* ———. *And whereas it duly appears to us, two of the commissioners of the land tax for the said county, that the said sum of* ——— *hath been lawfully demanded of the said* A. O., *and that the said* A. O. *hath refused and doth refuse to pay the same; and whereas the said* A. O. *having appeared before us in pursuance of our summons for that purpose, hath not shewed to us any sufficient cause why the same should not be paid:* [Or, *And whereas it hath been duly proved to us that the said* A. O. *hath been duly summoned to appear before us the said commissioners, to shew cause why the same should not be paid, but he the said* A. O. *hath neglected to appear according to such summons, and hath not shewed to us any sufficient cause why the same should not be paid;*] *These are therefore to require you forthwith to make distress of the goods and chattels of him the said* A. O., *and if within the space of four days next after such distress by you taken, the said sum, together with the charges of keeping the said distress, shall not be paid, that then you do cause the said distress to be appraised by two inhabitants or other sufficient persons, and to sell the same, returning to him the said* A. O. *the overplus, the charges of taking and keeping the said distress being first deducted.*

G. G. Form of the Duplicates to be transmitted to the Receiver-general, and into the Exchequer.

Westmorland. { *A SCHEDULE, containing the whole sum assessed upon each parish or place within the* East Ward *of the said county, for and towards an aid granted to his majesty by a land tax to be raised in* Great Britain, *for the service of the year one thousand seven hundred and* ——— *and also the christian names and surnames of the respective assessors and collectors; made by us whose names are hereunto set and seals affixed, commissioners of the land tax for the said county, this* ——— *day of* ———, *in the year aforesaid.*

		l.	*s.*	*d.*
Orton		0	0	0
Assessors	A. B. / C. D.			
Collectors	E. F. / G. H.			
Raisbeck		0	0	0
Assessors	I. K. / L. M.			
Collectors	N. O. / P. Q.	(and so on)		

Larceny.

LARCENY comes from *latrocinium, latrociny;* and by contraction, or rather abuse, *larceny.* 3 *Inst.* 107.

§ I. *Of Grand Larceny in general.*
[8 H. 6. c. 12.—21 H. 8. c. 7.—2 G. 2. c. 25.—4 G. 2. c. 32.—15 G. 2. c. 13.—24 G. 2. c. 11.—26 G. 2. c. 19.—21 G. 3. c. 68.—35 G. 3. c. 66.—37 G. 3. c. 46.—39 G. 3. c. 85.—43 G. 3. c. 59.—55 G. 3. c. 137.—56 G. 3. c. 73.]

II. *Of Petit Larceny.*
[3 Ed. 1. c. 15.]

III. *Punishments of Grand and Petit Larceny.*
[18 Eliz. c. 7.—5 Ann. c. 6.—4 G. 1. c. 11.—31 G. 3. c. 35.—53 G. 3. c. 162.—3 G. 4. c. 38.—5 G. 4. c. 84.]

IV. *Larceny from the Person.*
[8 El. c. 4.—12 Ann. st. 1. c. 7.—48 G. 3. c. 129.]

V. *Larceny from the House.*
[1 Ed. 6. c. 12.—39 El. c. 15.—3. W. c. 9.—10 & 11 W. c. 23.—12 Ann. st. 1. c. 7.—1 G. 4. c. 117.—4 G. 4. c. 53.]

VI. *Larceny and Embezzlement from Lodgings.*
[3 W. & M. c. 9.]

VII. *Larceny in a Booth or Tent.*
[5 & 6 Ed. 6. c. 9.]

VIII. *Larceny on a navigable River, Canal, &c.*
[2 G. 3. c. 28.—4 G. 4. c. 53.]

IX. *Other Larcenies.*
[13 G. 3. c. 31.—44 G. 3. c. 92.]

X. *Receiving stolen Goods.*

XI. *Offering Goods suspected to be stolen to be pawned or sold.*
[30 G. 2. c. 24.—22 G. 3. c. 58.]

XII. *Advertising a Reward for the Return of stolen Goods.*
[25 G. 2. c. 36.]

XIII. *Taking a Reward to help to stolen Goods.*
[4 G. 1. c. 11.—6 G. 1. c. 23.—1 G. 4. c. 115.]

XIV. *Charges of Prosecution and Conviction how to be paid.*

§ I. Of Grand Larceny in general.

Definition of larceny.

Larceny is defined by *Bracton, L. 3. de Corona. c. 32. fol.* 130. *b.* "*Fraudulenta contrectatio rei alienæ cum animo furandi, invito domino cujus res illa fuerit; animo dico, quia sine animo furandi non committitur.*" By Ld. *Coke*, (3 *Inst.* 107.) it is defined, "a felonious and fraudulent taking and carrying away by any man or woman of the mere personal goods of another, neither from the person, nor by night, nor in the house of the owner." "It is of the essence of robbery or larceny that the goods be taken against the will of the owner." *Fost.* 123.

Grand larceny.

Grand larceny is a felonious and fraudulent taking and carrying away by any person, of the mere personal goods of another above the value of 12*d.* *And has been well defined to be* the wrongful taking of goods with intent to spoil the owner of them *causâ lucri.* 1 *Haw. c.* 33. § 1.

The true meaning of larceny is, "the felonious taking the property of another without his consent, and against his will, with intent to convert it to the use of the taker." *Per Grose* J. *in delivering the opinion of the judges in Hammon's case, O. B. May Sess.* 1812. 2 *Leach*, 1089.

It appears however from the following case, that a larceny may be committed, not strictly falling under the above definition.

Clandestinely taking a master's corn, though to give the master's horses, is larceny; especially if by so feeding them the servant's

Richard Morfit and *Morris Conway* were tried before *Abbott* J. at *Maidstone Lent Assizes* 1816, upon an indictment for feloniously stealing two bushels of beans, value five shillings, the goods of *John Wimble*. Upon the trial it was proved that the prisoners were servants in husbandry to Mr. *Wimble*, and had the care of one of the teams; that Mr. *Wimble*'s bailiff was in the habit of delivering out to the prisoners, at stated periods, from a granary belonging to him, and of which his bailiff kept the key, such quan-

labour is likely to be diminished.

tities of beans as Mr. *Wimble* thought fit to allow for the horses of this team; the beans were to be split, and then given by the prisoners to the horses; that the granary door was opened by means of a false key procured for the purpose, which was afterwards found hid in the stable; and that about two bushels of beans were taken away on the day after an allowance had been delivered out as usual; and nearly that quantity of whole beans was found in a sack concealed under some chaff in a chaff-bin in the stable. The learned judge desired the jury to say, whether they thought both the prisoners were concerned in taking the beans from the granary, and also whether they intended to give them to Mr. *Wimble's* horses The jury answered both questions in the affirmative, and a verdict of guilty was taken, but judgment arrested until the next assizes, considerable doubts existing whether the above facts amounted to a larceny. A majority of the judges assembled, eight out of eleven in *E. T.* following held the offence to be *larceny*, and that the purpose to which they intended to apply them did not vary the case: it was alleged, however, that the additional beans would diminish the work of the men who had to look after the horses so that the master not only lost his beans, or had them applied to the injury of his horses, but the men's labour was lessened, so that the *lucri causâ* to give themselves ease, was an ingredient in the case. *Rex* v. *Morfit and Conway, Maidstone Lent Ass.* 1816. *MS. C. C. R.*

At the ensuing assizes *Morfit* was sentenced to be imprisoned one calendar month in the house of correction at *Maidstone;* and *Conway* was imprisoned one day in gaol, and then discharged.

The mind maketh a felony.

Felonious and fraudulent taking.] Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misanimadversion; as where persons break open a door in order to execute a warrant which will not justify such a proceeding; for in such case there is no felonious intention. 1 *Haw. c.* 25. § 3.

For it is the mind that makes the taking of another's goods to be felony, or a bare trespass only; but because the variety of circumstances is so great, and the complication thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; the same must be left to the due and attentive consideration of the judge and jury, wherein the best rule is, in doubtful matters, rather to incline to acquittal than conviction. Only, in general, it may be observed that the ordinary discovery of a felonious intent is, if the party do it secretly, or being charged with the goods deny it. 1 *Hale*, 509.

Claim of right.

And if goods be taken on claim of right, or property in them, it will be no felony; at the same time, it is matter of evidence, whether they were *bonâ fide* so taken, or whether they were not taken from the person actually possessing them with a thievish and felonious intent. And therefore, obtaining possession of goods by a fraudulent claim of right, or by a fraudulent pretence of law, and then running away with them, would be a felony. 1 *Hale*, 507. 1 *Haw. c.* 33. § 8. *Farr's case, Kel.* 43.

Trespass.

And it may be that the taking is no more than a trespass, and the circumstances in such case must guide the judgment. As where a man takes another's goods openly before him or before other persons, otherwise than by apparent robbery, or, having

possessed himself of them, avows the fact before he is questioned. 1 *Hale*, 509. 2 *East's P. C.* 661.

Philipps and *Strong* were indicted for stealing a mare and gelding of *John Goulter*. It appeared in evidence that the prisoners had gone to the stables of *Goulter*, who kept an inn at a place called *Petty France*, in the night of the 26th of *February* 1801, opened them, and taken out the horse and mare, the subject of the indictment, and rode on them to *Lechlade* about 32 or 33 miles off, where they carried them to different inns, and left them in care of the ostlers, directing them to clean and feed them, and saying that they should return in three hours. In the course of the same day, the prisoners were taken at a distance of 14 miles from *Lechlade*, walking towards *Farringdon* in *Berkshire*, in a direction from *Lechlade*. The jury being directed to consider, whether the prisoners, when they took the horse and mare, intended to make any further use of them than to ride them, for the purpose of assisting them on their journey towards the place where they were going, and then to leave them to be recovered by the owner or not as it might turn out; and whether they intended to return to *Lechlade*, and make any further use of them; found the prisoners guilty; but added, they were of opinion that the prisoners meant merely to ride them to *Lechlade*, and to leave them there; and that they had no intention to return for them, or to make any farther use of them. Upon this finding, at a conference first in *Easter*, and afterwards in *Trinity* term, 1801, the judges, (*dissentiente Grose* J. *et dubitante* Lord *Alvanley*,) held it to be only a trespass and no felony. For there was no intention in the prisoners to change the property, or make it their own; but only to use it for a special purpose, *i. e.* to save their labour in travelling. The judge who dissented thought there was no intention to return the horses to the owner, but, for ought the prisoners concerned themselves, to deprive him of them. But the rest agreed that it was a question for the jury; and that if they had found the prisoners guilty generally upon this evidence, the verdict could not have been questioned. *Philipps and Strong's case, Gloucester Sp. Ass.* 1801, *cor. Lawrence* J. *MS. C. C. R.*

The prisoners enter another's stable at night, and take out his horses and ride them thirty-two miles and leave them at an inn, and are afterwards found pursuing their journey on foot. On a finding by the jury that the prisoners took the horses merely with intent to ride and afterwards leave them, and not to return or make any farther use of them; held trespass and not larceny.

However, in all these cases, the concurrent conduct of the person accused must be considered for the purpose of determining whether or not the act done by him be felony.

But, nevertheless, doing it openly and avowedly doth not excuse from felony. As where a man came to *Smithfield* market to sell a horse, and a jockey coming thither to buy a horse, the owner delivered his horse to the jockey to ride up and down the market to try his paces, but instead of that the jockey rode away with the horse, this was adjudged felony. *Kel.* 82.

The doing an act openly doth not make it the less a felony.

So where a person came into a sempstress's shop, and cheapened goods, and ran away with the goods out of the shop, openly, in her sight, this was adjudged to be felony. *T. Raym.* 276.

So where a man comes into a house by colour of a writ of execution, and carries away the goods; or sues out a replevin to get another man's horse, and then runs away with him; this is felony under colour of law. 2 *Vent.* 94. *Kel.* 83.

Finding.

It is laid down in the books, that if one lose his goods, and another find them, though he convert them, *animo furandi*, to

his own use, yet it is no larceny, for the first taking was lawful. 3 *Inst.* 108. 1 *Haw. c.* 33. § 2. 2 *Russ.* 1041.

And Lord *Hale* says, if *A.* finds the purse of *B.* in the highway, and takes it and carries it away, and hath all the circumstances that may prove it to be done *animo furandi,* as denying it or secreting it, yet it is not felony. 1 *Hale,* 506.

But the doctrine of a taking by finding must be admitted with great limitation and must be understood to apply only where the finder really believes the goods to have been lost by the owner, and does not colour a felonious taking under such a pretence.

It will not avail, therefore, where a man's goods being in a place in which ordinarily and lawfully they are or may be placed, a person takes them *animo furandi.* 1 *Hale,* 506. 2 *Russ.* 1042. See *post,* p. 213.

Horses going on a common, or

Thus if a man's horse be going upon a common where he has a right to put him, and another take the horse with intent to steal him, it is no finding, but a felony. 1 *Hale,* 506.

Straying.

So also if the horse stray into a neighbour's ground or common, it is felony in him that so takes him.

Sheep straying.

If *A.*'s sheep stray into *B.*'s flock, and *B.* drives it along with his flock, and by bare mistake shears it, this taking is not a felony; but if he knew it to be another's and marks it with his mark, this is an evidence of felony. 1 *Hale,* 507.

But even if the place where the goods are found is not one in which ordinarily they would be deposited, circumstances may shew the taking to have been felonious. 1 *Hale,* 506.

A man hides a purse of money in his corn-mow, his servant finding it, took part of it. If, by circumstances, it can appear he knew his master laid it there, it is felony: but then the circumstances must be pregnant; otherwise it may be reasonably interpreted to be a bare finding, because the purse was deposited in so unusual a place. 2 *East's P. C.* 664. 2 *Hale,* 507.

Stealing box left in a hackney coach.

But where a gentleman left a trunk in a hackney coach, and the coachman took and converted it to his own use; held felony: for he must have known where he took up the gentleman and his trunk, and where he set him down; and therefore he ought to have restored it to him. *Lamb's case, O. B.* 1694. 2 *East's P. C.* 664.

Wynne's case.

So also in the case of *Wm. Wynne,* at the *O. B.* in *April* Sess. 1786. 1 *Leach,* 413. 2 *East's P. C.* 664. 2 *Russ.* 1042. The prisoner, who was a hackney coachman, had taken up the prosecutor with several packages at the *Adelphi,* and set him down in *Orchard-street,* where the prisoner and a servant took all the things out of the coach except one corded box which remained under one of the seats, and contained several articles, for the stealing of which the prisoner was indicted. The prisoner having received his fare, drove off; soon after which the box was missed, and all possible means were used that day to discover it, but without effect. In a few days, however, the prisoner was traced and taken, and the box found at a Jew's, whither it had been carried by the prisoner uncorded, the hasps forced off, and part of the goods only in it; several papers were missing, and among them two bonds mentioned in the indictment. *Eyre* B. observed to the jury, that as the prisoner had not originally taken possession of the property himself, but had it thrown upon him by the negligence of the prosecutor in leaving the box behind him in the coach, no felonious intention could be supposed to exist in the mind of the

defendant, at the moment theproperty was first acquired; and although the subsequent circumstance of keeping it until it was advertised, was a breach of moral duty, it could not of itself be legally considered as a criminal conversion. But if from the evidence the jury were satisfied in their consciences, that he had opened the box not merely from curiosity, but with an intention to embezzle any part of its contents, and that he had actually taken the goods, it would become a matter of legal consideration whether it was felony. The jury found the prisoner guilty: and, in *Easter* term, 1786, a majority of the judges held the conviction proper, and in *July* session following, he received sentence of transportation for seven years.

Sear's case.

At *O. B. Jan. Sess.* 1789. 1 *Leach*, 415. *n.* (*b.*) *John Sears* was indicted before *Ashhurst* J. for stealing a parcel of calico, &c. the property of *Sarah Dixon.* The prosecutrix hired the prisoner, who was a hackney coachman, to drive her from her house in *Manchester Buildings* to a linen draper's in *Oxford Street*, where she purchased the articles named in the indictment, which were tied up in a parcel and put into the coach. The prisoner drove back to *Manchester Buildings* and the prosecutrix on getting out of the coach ordered him to give the parcel to her servant, but he neglected so to do. The things were advertised, and a reward offered to any person who would restore them, but without effect. A few days afterwards the prosecutrix met the prisoner, but he denied ever having seen her or the things, or having driven the coach at the time. The goods however were traced to the prisoner's possession, and the parcel had been opened. Upon this evidence the prisoner was convicted of felony, and sentenced to six months imprisonment.

Cases of bank notes, &c. found by the prisoners, and converted to their own use.

The doctrine as to a felonious taking of goods, which have been *found* by the party, was further confirmed in two more recent cases. In the first, it appeared that a pocket-book containing bank notes had been found by the prisoner in the highway, and afterwards converted by him to his own use. Upon which *Lawrence* J. observed, that if the party finding property in such manner knows the owner of it, or if there be any mark upon it by which the owner can be ascertained, and the party, instead of restoring the property, converts it to his own use, such conversion will constitute a felonious taking. *Anon. cor. Lawrence* J. *Stafford Sum. Ass.* 1804. *MS.* And, in the other case, the two prisoners (father and son) were convicted of stealing a bill of exchange, upon evidence of their having found and converted it to their own use, by endeavouring to negociate it. *Gibbs* J. stated to the jury that it was the duty of every man who found the property of another to use all diligence to find the owner, and not to conceal the property (which was actually stealing it) and appropriate it to his own use. *R.* v. *J. & B. Walters, cor. Gibbs* J. *Warwick Sum. Ass.* 1812. *MS.*

Cartwright v. Green, Conversion of a large sum of money with a felonious intent, which was found in a

A singular case occurred at no very distant period, of a conversion, with a felonious intent, of a large sum of money found in a bureau, which had been delivered to a carpenter, for the purpose of being repaired. 8 *Ves.* 405. 2 *Leach*, 952. 2 *Russ.* 1015. The point arose in the Court of Chancery upon the following facts: *Ann Cartwright* died possessed of the bureau, in a secret part of which she had concealed nine hundred guineas *in*

bureau delivered to a carpenter to be repaired.

specie. After her death *Richard Cartwright*, her personal representative, lent the bureau to his brother *Henry;* who took it to the *East Indies* and brought it back, without the contents of it being discovered. It was then sold to a person named *Dick* for three guineas, who delivered it to one *Green* a carpenter, for the purpose of repairing it. *Green* employed a person named *Hillingworth*, who found out the money. *Hillingworth* received only a guinea for his trouble; but, in consequence of his discovery, the whole sum of nine hundred guineas was secreted by *Green*, by *Green*'s wife, and by one *Elizabeth Sharp*, and converted to their own use. On these suggestions, *Cartwright*, the personal representative of the original owner of the bureau, filed a bill of discovery against *Green* and his wife, and Mrs. *Sharp;* in which bill *Dick* joined, but did not claim any of the money on his own account; and the defendants demurred to the bill on the ground that an answer to the discovery sought might subject them to criminal punishment. After the argument upon this demurrer, the Lord *Chancellor* said, that the real question was, whether the bill charged a felony, and that the distinctions upon that point were so extremely nice, that he should not trust himself to say any thing upon them, until he had seen all the cases, and consulted some of the judges. Some time afterwards *April* 28, 1803, his lordship delivered his opinion and said, "I have looked into the books, "and having talked with some of the judges and others, I have not "found in any one person a doubt that this is a felony. To constitute "felony, there must of necessity be a felonious taking. Breach of "trust will not do. But from all the cases in *Hawkins*, there "is no doubt that this bureau being delivered to *Green*, for no "other purpose than to repair, if he broke open any part which "it was not necessary to touch for the purpose of repair, with an "intention to take and appropriate to his own use what he should "find, that is a felonious taking, within the principle of all "the modern cases; as not being warranted by the purpose for "which it was delivered. If a pocket-book containing bank-notes "were left in the pocket of a coat sent to be mended, and the "tailor took the pocket-book out of the pocket, and the notes "out of the pocket-book, there is not the least doubt that it is a "felony. So, if the pocket-book was left in a hackney coach, "if ten people were in the coach in the course of the day, and "the coachman did not know to which of them it belonged, he "acquires it by finding it certainly; but not being intrusted with "it for the purpose of opening it, that is felony according to the "modern cases. There is a vast number of other cases. Those "with whom I have conversed upon this point, who are of very "high authority, have no doubt upon it." See *Wynne's case*, *ante*.

Taking hay or corn and mixing it with others.

Ld. *Hale* says, if one man take another man's hay or corn, and mingle it with his own heap or stock; or take another man's cloth and embroider it with silk or gold; such other person may re-take the whole heap of corn, or cock of hay, or garment and embroidery also; and this re-taking is no felony, nor so much as a trespass. 1 *Hale*, 513.

Must be an actual taking from the possession of the owner.

There must be an actual taking or severance of the thing from the possession of the owner; for all felony includes trespass; and every indictment must have the words *feloniously took*, as well as *carried away:* from whence it follows, that if the party be guilty

of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. 1 *Haw. c.* 33. § 2.

The possession of the owner may be actual or constructive; that is, he may have the goods in his manual possession, or they may be in the actual possession of another, and at the same time be constructively in the owner's possession; and they may be his property by virtue of some contract, and yet not have been reduced by him into actual possession, in which case his possession is constructive: they may be placed by him under his servant's care, to be by him managed for him; in this case the owner has a constructive possession. **Of actual and constructive possession.**

Besides the actual and constructive possession in the owner, who at the same time has the property in him, there is a possession distinct from the actual property, but arising out of an interest in the goods acquired by contract; as in the case of one who has possession of goods in pledge, or of goods lent, or let: such a one has a property (as well as possession) concurrent with the absolute property of the real owner, and either defeasible or reducible into an absolute property, according to the terms agreed upon between him and the actual owner.

The above several kinds of possession will all be sufficient to sustain an indictment of larceny from the absolute owner.

The books notice cases in which although the manual custody be out of the owner and delivered by him to another, yet the possession, absolute as well as constructive, is deemed to remain in him, and the possession of the other to be no more than a bare charge.

Upon this difference between a possession and a charge, Lord *Coke* speaks as follows: "There is a diversity between a possession and a charge; for when I deliver goods to a man, he hath the possession of the goods, and may have an action of trespass if they be taken or stolen out of his possession. But my butler or cook, that in my house hath charge of my vessel or plate, hath no possession of them, nor shall have an action of trespass as the bailee shall: and therefore if they steal the plate, &c. it is larceny; and so it is of a shepherd, for these things be *in onere et non in possessione* promi, coci, pastoris," &c. **Difference between a possession and a charge.** **Butler or cook.** **Shepherd.**

So he says, "if a taverner set a piece of plate before a man to drink in it, and he carry it away, &c. it is larceny; for it is no bailment, but a special use to a special purpose." **Taverner's guest.**

Then as to those cases which lie *in possessione*, he draws a distinction between such as gain possession *animo furandi*, and such as do not; he says, "the intent to steal must be when it comes to his hands or possession; for, if he hath the possession of it once lawfully, though he hath the *animum furandi* afterwards and carrieth it away, it is no larceny." 3 *Inst.* 47. 107.

But the servant who keeps a key to my chamber may be guilty of felony in fraudulently taking away the goods therein, for he hath only a bare charge given him. **Servant.**

And so if a weaver who has received silk to work, or a miller who has corn to grind, take out part thereof, with intent to steal it, it is felony. 1 *Haw. c.* 33. § 56.

Another case is that of the carrier, See Vol. I. tit. Carrier, and it is laid down in the books, that if, while his contract is in the course of completing, he open the pack and take out a part of the goods, he **Carrier.**

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commits a larceny: but if he run away with the whole, it is a breach of trust and no larceny. So of a tun of wine. But if after arriving at the place where he should deliver his charge he steal a part, or the whole, it is larceny. 1 *Hale*, 504. *Staundf.* 25. *a.*

The above cases seem exceptions to the rule that no felony can be committed by *his* stealing the goods *to whom they were delivered* in possession by the owner in a way which excludes the supposition of their being originally taken with a felonious intent. But, in truth, the reason of the distinction seems this: Though the carrier, &c. have originally the goods delivered to them upon a trust, yet they are delivered as one whole and inseparable thing, and the only trust committed to him is over them in that state; and therefore his possession is a limited one: but, if he separate them, it is exercising an act of ownership not given to him over each part, and is therefore the same as an originally unlawful taking of that individual part, and it is also a carrying away by the mere act of separation. And this distinction should be carefully remembered, as it includes a number of cases very likely to occur in practice, viz. where a part is separated from a thing delivered entire.

By the common law, therefore, he who had goods delivered to him by the owner, thereby originally gaining a legal possession of them, could not by converting them to his own use with intent to steal, be deemed a felon and guilty of larceny. And it seems from 1 *Hale*, 505. that servants stood in the same situation, in this respect, as strangers; in order, therefore, that masters might be secured from the consequences resulting from the trust they were obliged to repose in their servants.

21 H. 8. c. 7. Servants embezzling their masters' property.

By stat. 21 *H.* 8. *c.* 7. reciting that divers persons had, upon confidence and trusts, delivered unto their servants their caskets and other jewels, money, goods, and chattels safely to be kept to the use of their said masters or mistresses, and that they had afterwards withdrawn themselves, and had gone away with the same, or part thereof, to the intent to steal the same, and sometimes being with their said masters, &c. had converted the same, or part thereof, to their own use; which misbehaviour so done, was doubtful in the common law whether it were felony or not, it is enacted, "That all and singular such servants (being of the age "of 18 and not apprentices), to whom any such caskets, &c. "by his or their said masters and mistresses shall from hence-"forth be so delivered to keep, if any such servant or servants "withdraw him or them from their said masters and mistresses, "and go away with the said caskets, &c. or any part thereof, to "the intent to steal the same and defraud his or their said mas-"ters or mistresses thereof, contrary to the trust and confidence "to him or them put by his or their said masters or mistresses; "or else being in the service of the said master or mistress, "without assent or commandment of his masters or mistresses, "he embezzle the same caskets, &c. or any part thereof, or "otherwise convert the same to his own use with like purpose "to steal it; that if the said caskets, &c. that any such servant "shall so go away with, or which he shall embezzle with purpose "to steal it as is aforesaid, be of the value of 40*s.* or above; that "then the same false, fraudulent, and untrue act or demeanor "from henceforth shall be deemed and adjudged felony," and the party so offending be punished as other felons for felonies committed, by the common law.

This statute extends only to such as were servants to the owner of the goods, both at the time of their delivery and when they were stolen, and not at all to apprentices bound by indenture as such, or to servants under 18 years of age. 1 *Haw. c.* 33. § 12. 2 *East's P. C.* 562.

The goods must have been delivered to the servant *to keep* for the master; and the words " kept to the use of the master" imply, that they are to be returned to the master: as in the following case: — What goods within the statute.

William Watson was tried on an indictment containing three counts; the first sta ing that the prisoner as a servant received 3*l.* 18*s.*, the money of *E. C.* his late master, which was delivered to him to keep safely to the use of his master; and that afterwards the said prisoner withdrew himself from his master with the money, with an intent to steal the same, and to defraud his said master thereof. The second count stated that the prisoner having received the said money in the manner above stated, and being with his master, had converted the same to his own use: and both concluded against the form of the statute. The third count was for larceny generally. It appeared that *Cowper*, who was a surrogate, had sent the prisoner, his servant, to buy some blank licences, and had delivered him the 3*l.* 18*s.* for that purpose; the prisoner ran away with the money. Being convicted, the question reserved was, whether the evidence supported any of the counts? And in *Easter* term, 1788, the judges held that *to keep* means to keep for the use of the master and to return to him. *Watson's case, Worcester Sp. Ass.* 1788. *cor. Heath* J., 2 *East's P.C.* 562.

The statute extends not to goods, the actual property of which were not in the master at the time: and therefore it is said that if the property be changed, as by melting money down, or malting corn, and then it be taken away, it is not within the statute. 1 *Haw. c.* 33. § 15. 2 *East's P. C.* 563. But *quære.* Whether this be not stated too generally, where the design of embezzlement originated before the alteration of the thing? for if the whole act of the servant be taken together as it ought to be, the subsequent appropriation of the metal or the malt to his own use may be evidence of the felonious intent with which he took the money or the corn. But it is agreed, that if a servant make a suit of clothes of cloth, or shoes of leather, or change one species of corn into another, which in their original state were delivered to him by his master to keep, he is within the statute, because the property is not altered. 1 *Haw. c.* 33. § 15.

But no wasting or consuming of goods is within the statute, however wilful. 1 *Haw. c.* 33. § 14.

The statute does not extend to cases where the servant has a mere charge over the goods; but that is still an offence at common law. A mere charge not within the statute.

The following are cases of servants who, having had a bare charge committed to them, and stolen the goods so entrusted to them, were adjudged to be guilty of the crime of larceny: —

Francis Paradice was indicted for stealing a bill of exchange of 100*l.* value, the property of *William Periam.* The prosecutor, to whom the bill was indorsed, was a draper at *Devizes*, and the prisoner, who was his book-keeper on a salary, kept his accounts, and received and paid money for him, but did not live in his house; One employed as a clerk in th[e] day time, but not residing in the house, embezzles a bill o[f]

exchange, which he received from his master in the usual course of business with directions to transmit it by the post to a correspondent: Held larceny.

but came every day there to transact his business. The prosecutor delivered the bill in question, with several others, to the prisoner, and ordered him to send them by that day's post, as he had often done before, from the *Devizes* to the prosecutor's banker in *London*, as cash to be accounted for to the prosecutor. The prisoner next day asked the prosecutor's leave to go to a town in the neighbourhood, which was consented to on condition that he returned the next day by 12 o'clock. The prisoner went to *Salisbury*, got cash for the bill, which was indorsed by the prosecutor, and next by the prisoner; who was afterwards apprehended at *Exeter* with part of the bills and the money. *Gould* J., before whom he was tried and convicted, respited judgment to take the opinion of the judges whether this were felony or a breach of trust. In *Easter* term 1766, all the judges (except Lord *Camden*, who was absent,) held it larceny, upon the principle that the possession still continued in the master. *Rex* v. *Paradice*, *Sarum Lent Ass.* 1766. 2 *East's P. C.* 565.

Carter going away with his master's cart.

A carter going away with his master's cart was holden to have been guilty of felony. *Robinson's case, O. B.* 1755. 2 *East's P. C.* 565.

Goods delivered to a tradesman's servant to carry to a customer, are still in the possession of the owner, and the servant is guilty of larceny in breaking the package and converting them.

Rex v. *Bass*, *O. B.* 1782, 2 *East's P. C.* 566. 1 *Leach*, 251. The prisoner was convicted of stealing gauze of the value of eight pounds, the property of the prosecutor, and the case was referred to the consideration of the twelve judges, upon the following facts: The prisoner was servant and porter in the general employ of the prosecutor, (who was a gauze-weaver,) and was sent with a package of goods from his master's house, with directions to deliver them to a customer at a particular place. In his way he met two men, who invited him into a public house to drink with them, and then persuaded him to open the package, and sell the goods to a person whom one of the men brought in: which he accordingly did, by taking them out of the package, putting them into the man's bag, and receiving, to his own use, part of the money for which they were sold. All the judges held this to be felony, on the ground that the possession of the goods still remained in the master.

Larceny and not breach of trust.

And where the prisoner was clerk to the prosecutors, and managed their cash concerns, and took bills to their bankers to discount whenever he wanted cash, and took from his master's desk an accepted bill, placed there by another clerk who had got it accepted by his master's order, and got it discounted, and absconded with the cash, he was held to be guilty of larceny, though it was objected that by the course of business he had a right to get money for the bill, and therefore could not be indicted legally for stealing the bill itself. *Chipchase's case, O. B. Oct.* 1795. *cor. Heath* J. 2 *East's P. C.* 567. 2 *Leach*, 699.

Where goods have not been reduced into the master's actual possession.

There is another class of cases in which the master *becomes, by contract* with another, *the owner* of goods in the actual possession of that other, and which are by the master's direction delivered *to his servant* for him. If the servant having thus received the goods, steal them, it is larceny at common law, as in the following case, viz.

A corn factor, having purchased a cargo of oats on board

Where the prisoner had been convicted for stealing forty bushels of oats, a question whether the facts amounted to felony, was reserved for the opinion of the judges. The prosecutors, who were cornfactors, had purchased a cargo of oats on board a

ship lying in the river *Thames*, and they sent the prisoner, who was employed in their service as a lighterman, with their barge to one *Wilson*, a corn-meter, for as much oats, in loose bulk, as the barge would carry. The prisoner proceeded to the ship, and received from *Wilson* two hundred and twenty quarters of oats, in loose bulk, and five quarters in sacks. The five quarters were put into sacks by the order of the prisoner, and were afterwards embezzled by him. The question submitted to the judges was, whether this was felony, as the oats had never been in the possession of the prosecutor; or whether it was not like the case of a servant receiving charge of, or buying a thing for his master and never delivering it. And the judges held that it was larceny in the prisoner, and a taking from the actual possession of the owner, as much as if the oats had been in his granary. *Spear's case, Kingston Sp. Ass.* 1798. 2 *East's P. C.* 568. 2 *Leach*, 825. See also *Abrahat's case*, 2 *East's P. C.* 569. 2 *Leach*, 824.

a ship, sent his servant with his barge to receive part of the oats in loose bulk; and the servant ordered some of them to be put into sacks which he afterwards embezzled: this was holden to be larceny.

John Brazier was tried before *Holroyd* J. at the *Sum. Ass.* for the town of *Nottingham*, 1817, for stealing fifteen bushels of wheat of the goods and chattels of *Thomas Neale.*—*Thomas Neale*, a farmer, sent 40 bags containing twenty quarters of wheat to the prisoner, who was a wharfinger and warehouseman in the town of *Nottingham*, and who received the same into his warehouse there for safe custody for his said employer *Thomas Neale*. The wheat was to lie there until sold; *Thomas Neale*, and not the prisoner, was the person to sell it. It was proved also that *Neale* did not give any authority to the prisoner to make any alteration in the wheat, or to open the bags either in order to shew them or otherwise. While the wheat thus remained in the prisoner's warehouse for safe custody, and was the property of the said *Thomas Neale* as aforesaid, the prisoner's servant by the prisoner's order, took eight of the bags containing four quarters of the above wheat from the rest, and shooting the same out of the bags down upon the warehouse floor, mixed the same with other wheat of much inferior quality and value, that was in like manner shot out of four bags on the warehouse floor and intermixed with the former; when so mixed, the whole was, by the prisoner's order, put into twelve other bags and afterwards disposed of and sent away by him for his own benefit. Afterwards, by the prisoner's orders, the above four quarters of *Thomas Neale*'s wheat were replaced with an equal quantity of the prisoner's wheat of very inferior quality and value, by mixing the same with two quarters of the residue of *Thomas Neale*'s above mentioned wheat, and replacing the same when so mixed in the bags from whence the four quarters of *Neale*'s wheat had been removed as aforesaid; other part of *Thomas Neale*'s wheat was in like manner fraudulently removed, replaced, and mixed by the prisoner's orders, and sixteen of the above bags, containing eight quarters of the wheat so mixed as aforesaid were afterwere delivered by the prisoner to the vendee of *Thomas Neale*, as being part of the said wheat of him the said *Thomas Neale* so deposited in the prisoner's warehouse as aforesaid. It did not appear that there was any severing of part of the wheat in any one bag from the residue of the wheat in the same bag with intent to steal or embezzle that part only that was so severed and not the residue in the same bag from which it was so severed. The jury, upon the facts above stated, found the prisoner guilty

Fraudulent appropriation by wharfinger of oats in his custody, but not in his legal possession; held a larceny.

of larceny, but the learned judge reserved the case for the consideration of the judges, and respited the judgment. In *Mich. term*, 1817, eleven judges assembled, were unanimously of opinion, that taking the wheat out of the bag was larceny; taking part only would have been so, and taking the whole was as much an offence as taking part. *Rex* v. *Brazier, Nottingham Sum. Ass.* 1817. *MS. C. C. R.*

Where goods are delivered by another to the master by the hands of his servant, the master not having property or possession of them prior to such delivery to the servant.

These several cases were all founded upon the master having an actual or legal possession prior to the delivery to the servant. But there are others in which the master has neither property nor possession in the goods previously to the receipt of them by his servant from a third person, for the purpose of delivering them to him. And it has been held that, at common law, a servant so receiving goods and then embezzling them is not guilty of larceny.

Waite was indicted for stealing *East India* bonds the property of the governor and company of the bank of *England*. The prisoner was cashier of the bank, and as such had received the six bonds amongst others by an order from the Court of Chancery, and had given receipts for them for the governor and company of the bank of *England*. The custom was for the directors to lock up such securities in a chest in the cellar, but these had never been out of the prisoner's desk till he converted them to his own use. This case was very fully argued both for the crown, and for the prisoner, and it was held, that as *Waite* received the bonds and they were never put into the cellar, in the usual course, the governor and company of the bank had no possession of them, but the possession remained always in the prisoner. *Waite's case, O. B.* 1743. 1 *Leach*, 28. 2 *East's P. C.* 570.

The same point was afterwards determined in the case of a banker's clerk, who received, on account, a note to be kept by his employers, and embezzled a part before he put it into the drawer where, in the course of business, it ought to have been placed. In this case it was agreed that as the note was never in the possession of the bankers, distinct from the possession of the prisoner, it was not felony, though if it had been put into the drawer it would have been otherwise. *Bazeley's case, O. B.* 1799. 2 *East's P. C.* 571. 2 *Leach*, 835.

39 G. 3. c. 85. Statute against embezzlements by servants.

But now, by stat. 39 *G.* 3. *c.* 85., intituled "*An act to protect masters against embezzlements by their clerks or servants,*" after reciting that "bankers, merchants, and others, are, in the course "of their dealings and transactions, frequently obliged to entrust "their servants, clerks, and persons employed by them in the like "capacity, with receiving, paying, negociating, exchanging, or "transferring, money, goods, bonds, bills, notes, bankers' drafts, "and other valuable effects and securities: And that doubts have "been entertained, whether the embezzling of the same by such "servants, clerks, and others, so employed by their masters, "amounts to felony by the law of *England*, and it is expedient "that such offences should be punished in the same manner in "both parts of the United Kingdom;" It is enacted and declared,

Servants or clerks taking into their possession any money or other

"That if any servant or clerk, or any person employed for the "purpose, in the capacity of a servant or clerk, to any person or "persons whomsoever, or to any body corporate or politic, shall, "by virtue of such employment, receive or take into his posses-

"sion, any money, goods, bond, bill, note, banker's draft, or other "valuable security or effects, for or in the name or on the ac- "count of his master or masters, or employer or employers, and "shall fraudulently embezzle, secrete, or make away with the same, "or any part thereof, every such offender shall be deemed to "have feloniously stolen the same from his master or masters, "employer or employers, for whose use or in whose name or "names, or on whose account the same was or were delivered to, "or taken into the possession of such servant, clerk, or other "person so employed, although such money, goods, bond, bill, "note, banker's draft, or other valuable security, was or were no "otherwise received into the possession (*a*) of his or their servant, "clerk, or other person so employed; and every such offender, "his adviser, procurer, aider, or abettor, being thereof lawfully "convicted or attainted, shall be liable to be transported to such "parts beyond the seas as his majesty, by and with the advice of "his privy council, shall appoint, for any term not exceeding "fourteen years, in the discretion of the court before whom such "offender shall be convicted or adjudged."

effects on their master's account, and fraudulently embezzling or secreting any part thereof, shall be deemed to have feloniously stolen the same;

and such offenders and their abettors shall, on conviction, be liable to be transported for fourteen years.

The effect of this statute is to constitute the offence described in it a larceny. It specifies what the circumstances are which shall be sufficient to constitute such offence a larceny, and under which circumstances the offender shall be deemed to have *feloniously stolen*. "First, he must be a servant or clerk, &c.; then he must "receive or take into his possession the money, goods, &c.; and "that must be for or on account of his master; and must fraudu- "lently embezzle the same." *Per* Ld. *Ellenborough* C. J. in *Rex* v. *Johnston*, 3 *M. & S.* 548, 549.

Shortly after this act was passed, it was ruled, that it was an offence within its provisions for a servant to embezzle money received from a customer of his master's, though the money had been given to the customer by the master, in order that it might be paid in the course of business to the servant, for the purpose of trying the servant's honesty. *Whittingham's case*, *O. B.* 1801. 2 *Leach*, 912. And in *Headge's case*, *O. B.* 1809. 2 *Leach*, 1033. it was decided by the judges, that a servant secreting money which the master had marked and sent by a friend, to make a purchase at his shop, with a view of trying the honesty of his servant, is guilty of a felonious breach of trust, and an embezzling within 39 *G.* 3. c. 85., and not a larceny at common law.—See also *Thomas Bull's case*, cited *arguendo* in *Bazeley's case*, 2 *Leach*, 841. and *Russ.* 1226.

Felony in servant to embezzle money received from a third person on his master's account, though paid to him with the master's privity, in order to try his honesty.

But where the property taken was delivered to the servant by the master himself, it was ruled that the case was not within this statute. The indictment charged the prisoner with having received and taken into his possession one shilling on account of his master, and embezzling the same; and upon the evidence it appeared, that having two shillings and sixpence of his master's

Aliter where the property taken was delivered to the servant by his master.

(*a*) Mr. *East* (2 *East's P. C.* 575. (n)) states, that by some blunder in the fair copy taken from the original draft of the act, a line has been omitted in this place, which was in the original draft prepared by himself, namely, "*of such master or masters, employer or employers, than by the actual possession.*" And the line is inserted in stat. 51 *G.* 3. c. 38. by which provision is made with respect to similar offences committed in *Ireland*. 51 G. 3. c. 38.

39 G.3. c.85. money to pay on account of his master, he only paid one shilling and sixpence, and converted the other shilling to his own use, upon which the learned judge directed the jury to acquit the prisoner. *Peck's case, cor. Park* J. *Stafford Sum. Ass.* 1817. *MS.*

If a servant, immediately on receiving a sum for his master, enters a smaller in his master's books, and ultimately accounts to his master for the smaller sum only, he may be considered as embezzling the difference at the time he made the entry. And it will make no difference, though he received other sums for his master on the same day, and in paying them and the smaller sum to his master together, he might give his master every piece of money or note he received at the time he made the false entry.

Rex v. *John Hall*, 3 *Stark. C. N. P.* 67. and *MS. C. C. R.* The prisoner was convicted before *Bayley* J. at *Lancaster Sum. Ass.* 1821, of embezzling six one pound notes, received by him as clerk to Messrs. *Hollingshead & Co.* It appeared in evidence, that on the 10th of *November*, he received from a Mrs. *Webster*, for and on account of Messrs. *Hollingshead & Co.* 18*l.* in one pound notes, and he immediately entered in the books of Messrs. *Hollingshead & Co.* as the amount received 12*l.* only, and he accounted to them only for 12*l.* In the course of the same day he received for them other sums, amounting to 104*l.* 2*s.*, and in the evening of that day he paid to Messrs. *Hollingshead & Co.* 116*l.* 2*s.* It was urged on the part of the prisoner, that the money he so paid might have included every one of the notes he received from Mrs. *Webster*, and if so, that he could not be considered as having embezzled any of those notes. Every one of those notes certainly might have been included in what he so paid, but his lordship told the jury, that as in what the prisoner paid he paid only 12*l.* as and for all he received of Mrs. *Webster*, and he paid the other 104*l.* 2*s.* as and for money received of other persons, he ought to be considered as embezzling six of the notes he received from Mrs. *Webster*, because he would then have misapplied those specific notes to his own benefit and to his master's prejudice. The jury found the prisoner guilty, and on case, nine judges in *M. T.* 1821. (*Best.* J. *absente*) thought it an embezzlement from the time of making the false entry.

Rex v. *Leech, Lanc. Sum. Ass.* 1821. 3 *Stark. C. N. P.* 70. The prisoner was indicted under stat. 39 *G.* 3. *c.* 85. for having embezzled a number of bank notes, which he had received into his possession as the clerk and servant of *T. R. B.* He was also charged with a common larceny. The prosecutor *T. R. B.* and *T. R.* were partners in trade, and the prisoner was in their employment in the capacity of book-keeper. Whilst he was thus in their employment he received the notes in question into his possession, being the private property of *T. R. B.*, to be deposited in the safe where the money of the firm was usually kept. He afterwards took them from the safe, and absconded with them. It was objected, that he could not be considered as the servant of *T. R. B.* the prosecutor, being, in fact, the servant of the prosecutor and his partner jointly; but *Bayley* J. held, that he was the servant of both; and said, that it had been decided by the judges, that where a traveller is employed by several houses to receive money, he is the individual servant of each. The prisoner was convicted.

And see *ante*, p. 36, n. (*a*).

The statute is not confined to clerks and servants of persons in trade: it extends to the clerks and servants employed to receive of all persons whatsoever.

The overseers of a township employed the prisoner as their accountant and treasurer, and

Rex v. *Squire, York Sp. Ass.* 1818. *MS. C. C. R.* 2 *Stark. Rep.* 349. *S. C.* The prisoner was indicted before *Bayley* J. at *York Spring Ass.* 1818, for embezzling fourteen one-guinea notes, received by him by virtue of his employment as clerk and servant to eight persons, who were overseers for the *township of Leeds.*

It appeared in evidence, that he had acted for several years for the overseers of that township at a yearly salary, under the name of their accountant and treasurer; that he received and paid all the money receivable or payable on their account, and that he rendered to them every week a weekly account, purporting to be an account of whatever he had received or paid during that period; that on the 23d of *June* 1817, he received the fourteen notes in question from *John Senior*, being money due from him as overseer of another township, for money supplied by the *township of Leeds* to a pauper in *Leeds*, belonging to *Senior's* township; that he had not entered that receipt in his weekly accounts, and that he had omitted other receipts at various times, to an amount exceeding 1800*l*. The learned judge told the jury, that if they were satisfied he intentionally omitted entering this receipt, for the fraudulent purpose of applying the money to purposes of his own, and that he had so applied it, they ought to find him guilty; and they found him guilty accordingly; but it having been urged that the prisoner was not such a clerk or servant as the statute contemplated, that point was reserved for the consideration of the judges, who, in *Easter Term* following, were of opinion, that the prisoner was clearly a clerk and servant within the statute.

39 G. 3. c. 85. —— he received and paid all the money received or payable on their account; he received a sum and embezzled it; and on case reserved, the judges were clear that he was a clerk and servant within the act.

Elizabeth Smith was convicted at the *Sum. Ass.* 1813, for the county of *Norfolk*, of embezzling a 5*l*. note, the property of *Charles Pincing*, in whose service she lived as house-keeper Ld. C. B. *Macdonald*, before whom the prisoner was tried, doubting whether the stat. 39 *G*. 3. *c*. 85. applied to a *female* servant, inasmuch as that act enacts and declares, "That if any servant or clerk, or "any person employed for the purpose, in the capacity of a ser-"vant or clerk, to any person or persons whomsoever, &c. shall, "by virtue of such employment, receive or take into *his* posses-"sion any money &c.," such servant fraudulently embezzling the same, shall be deemed to have stolen it feloniously: sentence was respited, and the point reserved for the consideration of the judges, who, in *M. T.* following, were unanimously of opinion that the act extended to *female* servants as well as *male*. *Elizabeth Smith's case, Norfolk Sum. Ass.* 1813.

Stat. 39 G. 3. c. 85. extends to female servants.

R. v. *Johnson*, 3 *M*. & *S*. 549. 550. The prisoner had been convicted at the assizes for *Lancashire*, and adjudged to be transported for fourteen years upon an indictment, several counts of which charged him with embezzling bank-notes against the form of the statute, and others with stealing bank-notes in the common form of counts for larceny; it was assigned for error that this was a *misjoinder*, the counts for embezzlement on the statute, and the counts for grand larceny being counts upon which a different judgment ought by law to be given. But the court of *K. B.* were of opinion, that the counts for embezzlement might well be joined with the counts for larceny, considering that the statute had in fact made the offence of embezzlement described in it a larceny; and that, having so done, it had attached upon it all the properties and consequences attaching upon the crime of larceny.

Counts for larceny at common law, and for embezzlement under the statute may be joined in the same indictment.

This stat. applies only to servants employed to receive money, and to instances in which they receive what they embezzle by virtue of their employment. Therefore, where a butcher's appren-

39 G. 3. c. 85. extends to apprentices, but

39 G.3. c.85.

only in cases where money is received by virtue of their employment.

tice, under eighteen, carried a bill for 17*s.* 10*d.* to a customer, got the money from him and embezzled it: he having never been employed to receive money for his master, On case to take the opinion of the judges whether the stat. extended to apprentices, the judges seemed to think it did, there being no exception; but on the ground that the prisoner was never employed to receive money, and therefore did not receive this by virtue of his employment, they held the conviction wrong. *Rex* v. *Mellish, O. B. E. T.* 1805. *MS. C. C. R.*

Indictment.

In an indictment on this stat. against a servant for embezzling money received on his master's account, it is not sufficient to follow the words of the statute; but there must be a positive allegation, that the money was the property of the prosecutor, as in other cases of larceny. *Rex* v. *M'Gregor, O. B. Sept.* 1801, 3 *Bos. & Pull.* 106. 2 *East's P. C.* 576. *Rex* v. *Floyd, Dorchester Sp. Ass.* 1802, *cor. Le Blanc* J. *MS. C. C. R. S. P.*

If the property embezzled consisted of bank notes, it will not be sufficient to charge in the indictment an embezzlement of the "pounds" merely to which the bank notes amounted in value.

R. v. Lindsey, Indictment charging the prisoner with embezzling 19l. the property of his master, is not supported by proving that the sum of 19l. was paid in bank notes.

James Lindsey was tried before *Park* J. at the *O. B. Sess. July* 1817. (*Abbott* J. present,) upon this stat. and was charged with embezzling 19*l.* the property of his master. The evidence was that the witness paid 19*l.* all in bank of *England* notes. *Park* and *Abbott* Js. were of opinion, that as the indictment charged the receipt of 19*l.* without saying more, it was to be taken *primâ facie* to be money, and that as the fact was, that they were notes, and this act of parliament had mentioned the different kinds of property specifically, the embezzlement of which was declared to be larceny, *Park* J. directed an acquittal accordingly. *Rex* v. *Furneaux, to the same effect before the twelve judges,* June 6*th*, 1817. *MS. C. C. R.*

Indictment ought to aver that the person charged was "*employed and entrusted to receive money.*"

It seems that an indictment on this statute ought to aver that the party charged was "*employed and entrusted to receive money.*" Thus where an indictment charged that the prisoner on the 7th *February,* 50th *Geo.* 3. was employed in the capacity of clerk to Messrs. *Roe & Co.* and that he, being such clerk, did by virtue of such employment, receive and take into his possession, on account of the said Messrs. *Roe & Co.* a certain sum of money, to wit, &c. without averring that he was employed and entrusted to receive, such indictment was, for this omission, holden bad. *Rex* v. *John Gilbert,* at *O. B. June Sess.* 1810, *cor. the Recorder* (*John Silvester, Esq.*) *M.S.* See also 3 *Chitt. C. L.* 982. *note* (*m*). 2 *Russ.* 1237. *note* (*o*).

The indictment charged that the prisoner was employed as a clerk to *A.* and that, by virtue of his employment, he received from *B.* on account of his master, 9*l.* 18*s.* 9*d.* *without shewing of what monies that sum was made up,* and that he fraudulently embezzled and secreted the same, omitting the word *feloniously;* and so it concluded that the jurors say, that he did feloniously embezzle, steal, take, and carry, &c. Objection was made that in the introductory part of the indictment it was not alleged that he did *feloniously* embezzle, &c. and that therefore the indictment failed to shew that he had committed a felony, and that, unless it was so shewn in the body of the indictment, it was not

enough that it was so alleged in the conclusion of it. The judges however, considered it to be sufficient that it was stated in the conclusion, and the indictment was holden good. *R.* v. *Crighton*, *Cor. Thomson* B., *Lancaster Sum. Ass.* 1803, *and before all the judges at* Serjeants' Inn, *M. T.* 1803. *MS. C. C. R. and cited per Bayley* J. 3 *M.* & *S.* 555. 39 G.3. c.85.

Trial. County.

Where the prisoner received money in the county of *Salop*, and denied such receipt in the county of *Stafford*, it was holden by the judges to be evidence to shew that the original receipt was with intent to embezzle, and that the trial was properly had in the county of *Salop*. Some of the judges were of opinion, that the offence was triable in either county, as referable to the original taking in the one, and not accounting, but denying the receipt when called upon, in the other. *Hobson's case, Shrewsbury Lent Ass.* 1803. & *E. T.* 1803. 1 *East's P. C. Add.* xxiv. 2 *Russ.* 1238.

And in a case where the prisoner received the money in *Surry*, and the same day being called upon to account for it in *Middlesex*, denied that he had ever received it, there being no evidence of the prisoner having done any act to embezzle in the county of *Surry*, the judges held that he was properly indicted in the county of *Middlesex*. *Taylor's case, O. B.* 1803. *MS. C. C. R.* 3 *Bos.* & *Pull.* 596. 2 *Leach*, 974.

Punishment for offences against this statute, not necessarily fourteen years' transportation.

The statute, in mentioning the specific punishment of transportation for fourteen years, does not exclude any other punishment of inferior degree. 2 *East's P. C.* 578. For "when the "statute declares that the offender under the circumstances shall "be deemed to have feloniously stolen, it makes the offence a "felony, and imposes all the common and ordinary consequences "attending a felony. Therefore, as in other cases of grand "larceny, the party convict will be liable to judgment of death "unless he pray the benefit of clergy, so it is the same in this "case. Some of the ordinary consequences of a conviction of "grand larceny have been shewn to follow a conviction under "this act; for although the act gives no power to fine or im-"prison, the common law punishments, still it is the practice to "impose such punishments; and the court is not confined to the "specific punishment of transportation for fourteen years men-"tioned in the act. The reason why the mention of such a "punishment was introduced into the act is probably this, that "the legislature meant the party convict should not only be "liable to all the ordinary punishments attaching upon a con-"viction of a clergyable felony, but that he should also be "liable to a greater term of transportation than in other cases of "clergyable felonies." *Per Bayley J. in Rex* v. *Johnson*, 3 *M.* & *S.* 556. 2 *Russ.* 1244. And see 3 *G.* 4. *c.* 38. § 2. *post.*

But, in order to found a judgment upon the statute, the indictment must be specially drawn so as to bring the case within it. *Jones's case, Winton Spring Ass.* 1800. 2 *East's P. C.* 576.

Servants of the Bank of England, &c.

Several statutes have been at various times passed to protect public companies from depredations by their officers and servants, as 15 *G.* 2. *c.* 13. § 12. with respect to those of the bank of *England*, making embezzlement a capital felony; 35 *G.* 3. *c.* 66. § 6., and 37 *G.* 3. *c.* 46. touching certain *Irish* annuities payable at the Bank of *England*, and containing the same provisions as stat.

15 *G.*2. *c.*13. §12. So stat. 24 *G.*2 *c.*.11. §3. respecting the officers and servants of the *South Sea House*, containing the same provisions as aforesaid. See also tit. Post, respecting persons employed in the post-office.

Receiving goods under a contract.

Where one receives goods from another under a supposed contract, and converts them to his own use, it will, under certain circumstances, be a larceny: in these cases possession is obtained by the consent of the owner, and the distinction arises upon the consideration whether or not he also at the same time parted with the property.

But if the owner delivers his property of his own accord to the prisoner, and there is no fraud in the prisoner to induce him so to do, it will not be larceny, though the prisoner intended to misapply the property when he took it, and misapplies it accordingly.

R. v. Walsh. Brokers, bankers, or agents, embezzling securities deposited with them for security or any special purpose, are guilty of misdemeanor.

R. v. *Walsh*, *Esq.* *M. P.* *H. T.* 1812. *MS.* *C. C. R.* 4 *Taunt.* 258. 2 *Leach*, 1054. *Walsh*, a stock-broker, advised Sir *Thomas Plumer* to sell stock, which he did, and the money was paid unto Sir *T. P.*'s bankers; Sir *T. P.* then gave *W.* a check on his banker for 22,500*l.*, that he might buy exchequer bills therewith. *W.* bought exchequer bills to the amount of 6000*l.*, and embezzled the rest of the money. It did not appear that *W.* had any intention to embezzle when he advised Sir *T. P.* to sell the stock, but afterwards foreseeing that he would give a check to buy exchequer bills, he formed his plan for embezzling part. When he got the check he got the money from the bankers. *Walsh* was indicted for stealing, first, the check, and, secondly, part of the money received upon it at the banker's. And such money was described, first, as Sir *T. P.*'s, and, secondly, as the banker's. The jury found that he had the design to embezzle when he took the check from Sir *T. P.* On case reserved, the judges (absent *Lawrence* J.) were unanimous this was no felony; first, because there was no fraud or contrivance to induce Sir *T. P.* to give the check. Secondly, because it could not be called his goods and chattels, and was of no value in his hands. Thirdly, because he had never had possession of the money received at the banker's, so that it could not be called his money; and, fourthly, because the bankers were discharged of the money on paying it on the check, so that they were not defrauded, and it could not be said the money was stolen from them. At the *O. B.* *Jan.* 1812, *per* Ld. C. B. *Macdonald.* No judgment was ever publicly pronounced in this case, but the prisoner was liberated. In the same year an act was passed (52 *G.* 3. *c.* 63. See Vol. I. tit. Cheat,) making it a misdemeanor in brokers, bankers, and others to embezzle securities deposited with them for safe custody, or for any special purpose, in violation of good faith, and contrary to the special purpose for which they were deposited.

52 G.3. c.63.

This distinction between parting with the *property* or the *possession* has been discussed and settled in a variety of cases.

R. v. Harvey. Obtaining delivery of a horse sold, on promise to return immediately and pay for it; and

Justin Harvey was indicted for horse stealing: and it appeared in evidence that the prisoner met the prosecutor at a fair with the horse which he had brought there for the purpose of selling it; and being known to him, proposed to him to become the purchaser. They walked together in the fair; and, upon a view of the horse, the prosecutor told the prisoner he should have it for 8*l.*: and

calling his servant, ordered him to deliver it to the prisoner: who immediately mounted the horse, telling the prosecutor that he would return immediately and pay him; the prosecutor replied *very well:* and the prisoner rode away with the horse and never returned.— *Gould* J. ordered an acquittal; for here was a complete contract of sale and delivery; the property as well as the possession was entirely parted with. *R.* v. *Harvey, Chelmsford Ass.* 1787, *Cor. Gould* J. 1 *Leach*, 467. 2 *East's P. C.* 669.

R. v. Harvey. riding off and not returning; no felony.

So, also, where the prisoner, with a fraudulent intent to obtain goods, ordered a tradesman to send him a piece of silk to be paid for on delivery; and, upon the silk being sent accordingly, gave the servant who brought it bills which were mere fabrications, and of no value: it was holden not to be larceny, on the ground that the servant *parted with the property* by accepting such payment as was offered, though his master did not intend to give the prisoner credit. *Park's case, O. B. Jan.* 1794. *MS. C. C. R.* 2 *Leach*, 614. 2 *East's P. C.* 671.

If several persons act in concert to steal a man's goods, and he is induced by fraud to trust one of them in presence of the others with the possession, and another of them entices him away, so that the man who has his goods may carry them off, all are guilty of felony. The receipt by one is a felonious taking by all.

Standley, Jones, and *Webster* conspired to get some money from *M'Laughlin.* They pretended he could not produce 100*l.*: he produced that sum in notes: *J.* took them to count; handed them to *S.*, and *S.* and *W.* pretended to gamble for them. *J.* beckoned *M'L.* out of the room, and *S.* and *W.* immediately decamped with the money; and all three afterwards shared it. On case reserved, the judges were unanimous that this was larceny in all three.—*Rex* v. *Standley and others, Warwick Lent Ass.* 1816, *Cor. N. G. Clarke, Esq. K. C. and before the Judges, E. T.* 1816. *MS. C. C. R.*

R. v. Standley and others.

The prosecutor having been inveigled by sharpers to bet with them, and suffered by them to win in the first instance, was afterwards stripped of a large sum, by losing a bet; and the whole transaction was found by the jury to have been a preconcerted scheme to get the prosecutor's money; but it was holden by the judges on case reserved, not to be a felonious taking, as the prosecutor parted with the *property* in his money, under an idea that it had been fairly won. *Case of Nicholson, Jones, and Chappel, O. B.* 1794. 2 *Leach*, 610. 2 *East's P. C.* 669.

Case of Nicholson and others.

Rex v. *Robson, Gill, Fewster and Nicholson, MS. C. C. R. E. T.* 1820. The prisoners were convicted before *Bayley* J. at the Lent assizes at *Newcastle-upon-Tyne*, 1820, of stealing, from the person of *John Younger*, twenty notes for one guinea each. The facts were as follows: — *R.*, by pretending to find a sixpence in a fair, decoyed *Y.* to a public-house. They were there joined by the three other prisoners; after a little time *G.*, who pretended to be flush of money, began to play with *F.* at guessing at a halfpenny which *F.* hid under a pewter pot: *G.* was to guess three times right out of four. After losing twice, *G.* offered a wager of a pound that none of them could produce 10*l.* *F.* took the bet, and advised *Y.* to do the same: he had not money enough about him, but went and borrowed 20 guinea notes of a friend; and then it was conceded he had won. *G.* then

If there be a plan to cheat a man of his property under colour of a bet, and he parts with the *possession* only, to deposit as a stake to one of the confederates, the taking by such confederate is felonious.

offered *F.* to bet him 100*l.*, or 50*l.*, or any other sum, that he guessed the halfpenny right three times out of four; and *F.* betted him 40*l.* *G.* guessed wrong once out of the four times, and then went out. In his absence, *F.* advised *Y.* to go halves in the bet, as he was sure to win; and after some persuasion he consented; and on *G.*'s return he handed his 20 notes to *G.*, who passed them on to *R.*, who was to be stake-holder. *G.* then pretended to guess the remaining three times, and being right in each *R.* gave him the stake, and he went away.—*Bayley* J. told the jury, that if they thought, when *G.* took the notes from *Y* and passed them to *R.*, there was a plan and concert between the prisoners that *Y.* should never have his notes back, but that they should keep them for themselves, under the false colour and pretence that *G.* won his bet, he thought it a felonious taking, and a felonious taking by all.—The jury were of that opinion; and on case reserved, (*East*, *T.* 1820.) the judges [ten] held the conviction right; because at the time of the taking, the prosecutor parted with the *possession* only.

N. B. *R.* v. *Nicholson and others*, 2 *East's P. C.* 669. *ante*, 227. was referred to: but that case is distinguishable from the above, the *property* having been parted with by the prosecutor: here the prosecutor parted with the *possession only*, and not the *property*.

No difference where delivery from the owner upon credit obtained under another's name.

It makes no difference in these cases, that the credit was obtained by fraudulently using another's name, to whom, in truth, the credit was intended to be given, if the delivery of the goods were made by the owner, or any other having the disposing power for that purpose. 2 *East's P. C.* 672.

Obtaining silver on pretence of sending a half guinea presently in exchange; no felony.

Thus where the prisoner went to a tradesman's house, and said she came from a Mrs. *Cook*, a neighbour, who would be much obliged if he would let her have half a guinea's worth of silver, and that she would send the half guinea presently. The prisoner obtained the silver and never returned; and this was holden no felony. This was, in truth, a *loan* of the silver, upon the faith that the amount would be repaid at another time. It was money obtained on a false pretence. And the same determination has been made in similar cases at the *O. B.* *Coleman's case, O. B. June*, 1785, 2 *East's P. C.* 672.

If the ownership is parted with, it is no felony, though the owner is induced to part with it by a fraudulent representation.

R. v. Adams.

The prisoner discovered that *Paul* had ordered a hat of *Beer*, and he sent a boy to *Beer*'s for it in *Paul*'s name, and obtained it. He was indicted for stealing it. And one count stated it to be *Beer*'s property, another *Paul's*. It was urged that he should have been indicted for obtaining it by false pretences: and on a case reserved, the judges held the conviction could not be supported. Not on the first count, because *Beer* had parted with the ownership; and not on the second, because *Paul* had never had possession. *R.* v. *Adams, Taunton Sp. Ass.* 1812. *Cor. Chambre* J. *MS. C. C. R.*

One writing a letter in the name of another to a third person to borrow money, which he obtains by that fraud, is

James William Atkinson was indicted (*M. T.* 1799,) for stealing two bank-notes, the property of *William Dunn* against the statute. It appeared that the prisoner sent one *Dale* (to whom he was unknown) with a letter directed to *Dunn*; bidding *Dale* to tell *Dunn* that he brought the letter from Mr. *Broad*; and to bring the answer to him (the prisoner) in the next street, where he would wait for him. *Dale* accordingly carried to *Dunn* the letter which

was written in the name of *Broad*, a friend of *Dunn's*, soliciting the loan of 3*l.* for a few days; and desiring that the money might be inclosed back in the letter immediately. *Dunn* thereupon sent the bank-notes in question, inclosed in a letter directed to *Broad*, and delivered the same to *Dale*, who delivered them to the prisoner as he was first ordered. The letter turned out to be an imposition. It was objected at the trial that this was no felony, because the absolute dominion of the property was parted with by the owner, though induced thereto by means of a false and fraudulent pretence. And on reference to the judges after conviction, all present held that it was no felony; on the ground that the property was intended to pass by the delivery of the owner; and that this case came within the stat. 33 *H.* 8. *c.* 1. against false tokens, which particularly speaks of counterfeit letters. *Atkinson's case, O. B. Sept.* 1799. *Cor. Le Blanc* J. *MS. C. C. R.* 2 *East's P. C.* 673.

only guilty of misdemeanor.

Delivery, where the owner *does not part with the property*, but only with the *possession* of the goods.

If the owner has not parted with the *property* in the goods, but only with the *possession* of them, the question of larceny still remains open; and will depend upon the fact, whether, at the time of the alleged felonious taking, the owner had parted with the possession of the goods in such a manner, and to such an extent, as to exclude the idea of trespass. For if the owner of the goods parted with the possession of them without fraud practised by the taker, and if, after the owner had so parted with the possession of them, nothing was done to determine the privity of contract under which the taker had the possession of them delivered to him, no trespass, and therefore no larceny, can be committed by their conversion. 2 *Russ.* 1068.

Goods examined by one pretending to become a purchaser, and set apart from the rest, but not actually bargained for or delivered, were afterwards carried off by him while the owner was sent away on pretence of getting more; held felony: the property not being transferred.

Sharpless and *Greatrix* were convicted of stealing six pair of silk stockings of *Owen Hudson;* on which a case was reserved for the consideration of the judges; which stated that *Greatrix* in the character of servant to *Sharpless* had left a note at *Hudson's* shop, who was a hosier, desiring that he would send an assortment of silk stockings to his master's lodgings, at the *Red Lamp*, in *Queen-square.* The hosier having taken them according to direction, *Greatrix* opened the door to him, and introduced him into a parlour, where *Sharpless* was sitting in a dressing-gown, his hair just dressed, and an unusual quantity of powder over his face. Having looked at some of the stockings, and asked the price, which he was told was 14*s.* a pair, he desired Mr. *Hudson* to fetch some silk pieces for breeches, and some black silk stockings with French clocks. *Hudson* hung the six pair of stockings which *Sharpless* had looked out on the back of the chair, and went home for the other goods; but no positive agreement had taken place respecting the stockings. During *Hudson's* absence, the prisoners decamped with the goods, which were proved to have been afterwards pawned by one of them. The judges were of opinion that the conviction was right; for the whole of the prisoners' conduct manifested a pre-conceived design to obtain a tortious possession of the property: and the verdict of the jury imported that in their belief the evil intention preceded the possession of the goods by them. But that even independent of that, there did not appear a sufficient delivery to change the property. *R.* v. *Sharpless & Greatrix*, *O. B. May* 1772. *Cor. Gould* J. 2 *East's P. C.* 675. 1 *Leach*, 92.

Where the owner of goods sent them by his servant to be delivered to *A.*, and the prisoner fraudulently procured the delivery of them to himself, by pretending to be *A.*, it was holden to be larceny. *Wilkins's case,* *O. B.* 1789. 1 *Leach*, 520. 2 *East's P. C.* 673.

Obtaining possession from a person who has the charge of goods by pretending to be the servant of a person who has bought them, is felony.

Robert Hench was indicted for stealing a chest and 59 pounds' weight of tea, which in one count of the indictment, were stated as the property of *James Layton* and *William James Thompson;* and in another count, as the property of the *East India Company.* The facts were that Messrs. *Layton & Co.*, who were tea brokers, had purchased the chest of tea in question, No. 7100, at the *East India House,* but had not taken it away, when the prisoner who was no way employed by them went thither, and going up to the place where the request papers were kept, selected one of them, and then proceeded with the paper in his hand, as if to look for a chest of tea corresponding with the number on the paper. The servant in the *India House,* who had the care of the request papers, seeing him so engaged, went up to him, took the paper which was in his hand, and seeing the number 7100 upon it, pointed to a chest with a corresponding number, and said that was the chest he wanted; and then returned the paper to him, in order that he might go to the permit office, from whence he shortly afterwards returned with a permit to the *India House,* where the same servant who had the care of the request papers received the permit from him, and asked him whose partner he was? and upon his answering "*Noton's*," returned the permit to him again, and entered the name of *Noton* in the book. The prisoner then took away the chest of tea. Upon this evidence the jury found the prisoner guilty; when an objection was taken by his counsel, that as the possession of the property was obtained by a regular request note and permit, the offence could only be considered as a a misdemeanor; and the court reserved the point for the consideration of the judges, who (*Hil. T.* 1811) were clearly of opinion that the offence amounted to felony. *Hench's case, O. B. Oct.* 1810. *Cor. Sir J. Sylvester, Bart. Recorder. MS. C. C. R.*

R. v. *Aickle, O. B.* 1784. 2 *East's P. C.* 675. 1 *Leach,* 294. 2 *Russ.* 1072. The prisoner agreed with the prosecutor to discount a bill of exchange for him, and the bill was delivered into the prisoner's hands. The prisoner then said, that if the prosecutor would come to his lodgings, he would give him the cash. The prosecutor did not go himself, but sent his clerk, whom he desired not to lose sight of the prisoner till he had got the money. The prisoner contrived to get away from the clerk with the bill, and without paying the money. This was holden to be larceny; the jury finding a preconcerted design by the prisoner to get the bill into his possession with intent to steal it.

It should be observed, that in this case the proseutor never gave the prisoner credit for the property of the bill, and therefore did not part with the legal possession.

Where money or other property is parted with for the performance of a certain engagement, and the party, instead of complying

with such engagement, converts the same to his own use, he is guilty of felony.

R. v. *Oliver.* The prisoner was indicted for stealing 35*l.* the property of *William Smith.* The prosecutor had entrusted the prisoner with notes to the amount of 35*l.* to procure him gold in lieu thereof, but having got possession of the notes, he went away with them, and did not return with the gold as he promised to do. *Wood* B. held, that the prosecutor having parted with his notes upon the faith of his having gold and silver in return, and the prisoner not having complied with the trust reposed in him, he was guilty of felony. The learned judge further said, that a parting with the property in goods could only be effected by contract, which required the assent of two minds, but that in this case there was not the assent of the mind, either of the prosecutor or of the prisoner; the prosecutor only meaning to part with his notes on the faith of having the gold in return, and the prisoner never meaning to barter, but to steal. *Northumb. Sum. Ass.* 1811. *Cor. Wood* B. *MS. S. C. cited by Gurney* arguendo, *Walsh's case*, 4 *Taunt.* 274. 2 *Leach*, 1072.

So where it appeared that the prisoners decoyed the prosecutor into a public house, and there introduced the play of cutting cards, and that one of them prevailed upon the prosecutor (who did not play on his own account,) to cut the cards for him, and then, under pretence that the prosecutor had cut the cards for himself and had lost, another of them swept his money off the table and went away with it: it was considered to be one of those cases which should be left to the jury to determine *quó animo* the money was obtained, and which would be felony, in case they should find that the money was obtained upon a preconcerted plan to steal it. *R.* v. *Horner and others*, 1 *Leach*, 270. *Cald.* 295.

If credit be given for property for ever so short a time, no felony can be committed in converting it. 2 *East's P. C.* 677, 678.

By way of pledge or security.

So where the delivery is by way of pledge or security, the property in the thing pledged remains in the owner, and therefore larceny may be committed of it, if such delivery were obtained fraudulently and with intent to steal.

Pretending to find a jewel, in which the prosecutor as present at the time was to share, and inducing him to take charge of it, and to deposit with the finder his watch &c. until the latter should redeem the jewel by paying a certain sum of money; and this done with intent to steal the watch, &c.; held larceny.

John Patch was indicted for stealing a silver watch, gold seal, &c. and 7*s.* the property of *J. Bumstead.* The prisoner and two others joined *Bumstead* in a street in *London*, and after walking a little way with him, one of them stooped down and picked up a purse, which contained a ring, and a receipt for 147*l.* purporting to be the receipt of a jeweller for a rich brilliant diamond ring. The prisoner proposed that they should go into a public house, which they accordingly did, to consider in what manner the prize should be divided amongst them. After various proposals, the prisoner at length asked the prosecutor if it would be agreeable to him to take the ring into his own possession, and to deposit his money and watch, which he had before interrogated him about, as a security, to return it upon receiving his portion of its value. The prosecutor assented, and signed a written agreement, dictated by the prisoner; that when the prisoner or either of the two other men returned the watch and money and 70*l.* he would re-deliver to them the purse and the ring. The prosecutor accordingly laid the watch and money mentioned in the indictment on the table, and received the ring. The prisoner beckoned the prosecutor

R. v. Patch.

out of the room upon pretence of speaking to him in private, and in the mean time the other two men went off with the property. Their abrupt departure alarmed the prosecutor, but the prisoner told him not to be uneasy, for he knew the two men very well, and would take care that he should have his watch and money again; and when the prisoner was apprehended he wanted to make it up. The ring was valued at 10*s*. It was objected that this amounted only to a fraud. But the court, upon the authority of *Pear's case*, (*infra*) referred it to the jury to consider, whether the whole transaction were not a preconcerted scheme, feloniously to obtain the prosecutor's property? And *Gould* J. who tried the prisoner, left it to the jury, whether the prisoner and the other two men were not all in concert together to procure by such a pretext any man's property whom they might meet, and to embezzle it; which in plain words was to steal it? The jury found the prisoner guilty, and he was sent to the *Thames* for three years. *Patch's case, O. B. Feb.* 1782. 2 *East's P. C.* 678. 1 *Leach*, 238.

The principle of this case has been subsequently recognised in the cases of *Rex* v. *Humphrey Moore*, 1 *Leach*, 314. 2 *East's P. C.* 679. reserved by Mr. *Serjeant Adair*, recorder, at the *O. B. Apr. Sess.* 1784, and *Rex* v. *John Watson*, 2 *Leach*, 640. 2 *East's P.C.* 680, reserved by *Perryn* B. at the *O. B. December Sess.* 1794, for the opinion of the judges; and both prisoners were sentenced to transportation for seven years.

Taking goods by delivery of owner with felonious intent.

It is peculiarly the province of the jury to determine with what intent any act is done; and therefore, though in general he who has a possession of any thing on delivery by the owner cannot commit felony thereof; yet that must be understood, first, where the possession is absolutely changed by the delivery, which has before been considered; and next, which is the present object of enquiry, where such possession is not obtained by fraud, and with a felonious intent. For if, under all the circumstances of the case it be found that a party has taken goods from the owner, though by his delivery, with an intent to steal them, such taking amounts to felony. 2 *East's P. C.* 685.

This principle is illustrated by the following cases.

Hiring a horse on pretence of taking a journey, but in truth with intent to steal it, and evidencing such felonious intent by immediately selling the horse as soon as the party obtained possession of it, is larceny.

John Pear was indicted for stealing a black mare, the property of *Samuel Finch*. On the 2d *July* 1779, the prisoner hired the mare of *Finch*, who lived in *London*, for that day, in order to go to *Sutton* in *Surrey*, and told him that he should return at eight o'clock the same evening. *Finch*, before he let the prisoner the mare, enquired of him where he lived, and whether he were a housekeeper? to which he answered, that he lived at No. 25 in *King-street*, and was only a lodger. The prisoner not returning as he had promised, the prosecutor went the next day to enquire for him according to the direction he had given; but no such person was to be found. It turned out that the prisoner had, in the afternoon of the same 2d of *July*, sold the mare in *Smithfield*. In summing up this evidence to the jury, Mr. Justice *Ashhurst*, who tried the prisoner, told them, that if they were of opinion that the prisoner hired the mare with an intent of taking the journey mentioned, and afterwards changed that intention; then, as she was sold whilst the privity of contract subsisted, they ought to acquit the prisoner. But if they were of opinion that the journey was a mere pretence to get the mare into his possession, and that he

hired her with an intention of stealing her, they ought to find him guilty; and he would save the point for the opinion of the judges. The jury found the prisoner guilty. This case was very solemnly discussed at Ld. C. J. *De Grey's* house on 4th *Feb.* 1780, and on the 22d of the same month, Mr. B. *Perryn* delivered the opinion of the judges at the *O. B.* at considerable length. A very copious and accurate report of which being given by Mr. *East* in the 2d vol. of his Treatise of the *P. C.* p. 685, it is only necessary to state that ten judges out of eleven were of opinion, that if a person obtained the delivery of a thing by fraud and falsehood, intending at the time that he so obtained the delivery to steal it, upon the principle of the common law and adjudged cases, his offence would be felony. That in the present case the original intention of the prisoner in hiring the horse had been properly left to the jury, and as they had found that it was felonious, the parting with the possession had not changed the nature of the property, and that the prisoner was therefore guilty of felony. (*a*) *Pear's case, O. B. Sept.* 1779. 2 *East's P. C.* 685. 2 *Leach*, 212.

Obtaining a horse by pretending that another person wanted to hire it to go to *B.*, but in truth with intent to steal it; and not going to *B.*, but taking the horse elsewhere and selling him, held larceny.

George Charlewood was indicted at the *O. B. Feb. Sess.* 1786, before *Gould* J. and *Perryn* B. for stealing a gelding of *John Houseman*. The prosecutor was a livery-stable keeper, in *Crown-street, St. Ann's, Soho;* and, on the 4th *October* 1785, was applied to by the prisoner, a post-boy, for a horse, in the name of a Mr. *Ely*, saying that there was a chaise going to *Barnet*, and that Mr. *Ely* wanted a horse for his servant to accompany the chaise and return with it. The horse was accordingly delivered to the prisoner by the prosecutor's servant about nine o'clock in the morning. The prisoner mounted him, and on going out of the yard, said he was going no further than *Barnet*. He accordingly proceeded towards *Tottenham Court Road*, which led to *Barnet*, and also, though in some degree circuitously, to Mr. *Ely's* house. Between three and four o'clock in the afternoon of the same day the prisoner sold the horse in *Goodman's Fields* for a guinea and a half, including the bridle and saddle. The horse was much injured, and appeared to have been rode very hard. The purchaser almost immediately sold his bargain for 2*l.* 15*s.* The court observed to the jury that the judges in *Pear's* case under similar circumstances with the present, had determined that if the jury were satisfied under all the circumstances, that a person, at the time he obtained another's property, meant to convert it to his own use, it was felony. That there was a distinction, however, to be observed in this case, though it was so nice that it might not be obvious to common understandings; for that if they thought that the prisoner, at the time he hired the

(*a*) On the debate in this case, *Ashhurst* J. said, wherever there is a real and *bonâ fide* contract and a delivery, and afterwards the goods are converted to the party's own use, that is not felony. But if there be no real and *bonâ fide* contract, if the understanding of the parties be not the same, the contract is a mere pretence, and the taking is a taking with intent to commit felony. 2 *East's P.C.* 688.

And *per Eyre* B. where goods are delivered upon a *false token*, and the owner meant to part with the property absolutely, and never expected to have the goods returned again it might be difficult to reach the case otherwise than through the statutes *H.* 8. and *G.* 2. *Aliter*, where he parted with the possession only; for there if the possession were obtained by fraud, and not taken according to the agreement, it was on the whole a taking against the will of the owner, and if done *animo furandi*, was a felony. 2 *East's P. C.* 689.

Charlewood's case.

horse for the purpose of going to *Barnet*, really intended to go there, but finding himself in possession of the horse, afterwards determined to convert it to his own use, instead of proceeding to the place to which the horse was hired to go, it would not amount to a felonious taking. That there was yet another point for their consideration; for although the prisoner really went to *Barnet*, yet being obliged by the contract to re-deliver the horse to the owner upon his return to *London*; if they thought he performed the journey and returned to *London* (a); and after such return, instead of delivering it to the owner, converted it to his own use, he was thereby guilty of felony; for the end and purpose of hiring the horse would be then over. The jury found the prisoner guilty on the first point, that at the time he hired the horse he intended to steal it: and he was afterwards executed. *Rex* v. *Charlewood*, 1 *Leach*, 409. *Sess. P. No.* 200. 2 *East's P. C.* 689.

One obtains possession of a chaise under pretence of hiring it for three weeks or a month, suggesting his intention to go on a tour, and he departs with it, and is not heard of for a year afterwards, when he is apprehended: and then he gives no account of the chaise: Held evidence from whence the jury may infer that he originally took it under the pretence of a hiring with intent to steal it.

Major *Semple* was indicted for larceny of a post-chaise; and the following facts appeared. The prosecutor, Mr. *Lycett*, was a coachmaker, who let out carriages to hire. The prisoner was a gentleman who lodged in the neighbourhood, and had before hired a carriage of the prosecutor, for which he had paid. On the 1st of *September*, 1785, the prisoner, who then passed by the name of Major *Harold*, hired the chaise in question of the prosecutor, saying that he should want it for three weeks or a month, as he was going a tour round the north; and it was agreed that he should pay at the rate of 5*s*. a-day during that time; and a price of 50 guineas was talked about in case he should determine to purchase it on his return to *London*, which was suggested by the prisoner; but no agreement took place on the subject of the purchase. In a few days afterwards the prisoner took the chaise from Mr. *Lycett's* with his own horses; and it was in evidence that he was driven in it from *London* to an inn at *Uxbridge*, where he ordered a pair of horses, and went from thence to *Bulstrode*, and returned to the same inn, where he took fresh horses; but where he went with the chaise afterwards did not appear. No tidings were obtained of him till a year afterwards, when he was apprehended on another charge. It was attempted to distinguish this from *Pear's* case and *Aickle's* case, inasmuch as in those cases the parties had never obtained the legal possession of the property delivered to them: but that in the present case the prisoner had obtained the chaise upon a contract, which it was not proved that he had broken; for the chaise was hired generally for three weeks or a month, and not to go to any certain place: for the mere understanding that it was for the purpose of making a tour round the north made no part of the contract. During that time, therefore, he had a complete dominion over it, and the legal possession; and therefore a tortious conversion pending the contract would not be felony. Besides there was no evidence of a tortious conversion; for *non constat* that the prisoner had disposed of the chaise. The court, however, said, that it was now settled that the question of intention was for

(a) *Quære?* For part of the contract was *to return the horse to the owner in London*; and, therefore, the contract, if genuine and valid in the first instance on the part of the prisoner, would subsist after his mere return to *London*.

the consideration of the jury: and that in the present case, if they should be of opinion that the original taking of the chaise was with a felonious intent to steal it, and the hiring a mere pretence to enable him to effectuate that design, without any intention to restore or pay for it, it would fall precisely within the principle of *Pear's* case, and the other decisions which had been made; and the taking would amount to felony. For if the owner only intended to give the prisoner a qualified use of the chaise, and the prisoner had no intention to make use of that qualified possession, but to convert it to his own use, he did not take it upon the contract, and therefore did not obtain the lawful possession of it; but if there were a *bonâ fide* hiring, and a real intention of returning it at that time, the subsequent conversion of it could not be felony; for by such contract and delivery the prisoner would have acquired the lawful possession of the chaise; in which case his subsequent abuse of that trust would not be felony. That, as to there being no proof of actual conversion in this case, it was not necessary; but the jury must judge of it from the circumstances. If the prisoner had staid out six weeks, or two months, and on his return had offered to restore the chaise to the owner, or to pay him for it, such a conduct would have been evidence of an honest intention at the time of the hiring: but there was no account given of it, even up to that moment: that therefore raised a presumption against the prisoner which it was incumbent on him to repel: and if he could not, the jury would have to consider from all the facts in proof, whether the taking were with a felonious intent or not. If it were, the case fell directly within the principle which governed that of *Pear's* from which it could not be distinguished. A case was also then mentioned as having been determined very lately by the judges, where a man ordered a pair of candlesticks from a silversmith to be sent to his lodgings, whither they were sent accordingly, with a bill of parcels, by a servant; and the prisoner contriving to send the servant back nnder some pretence, kept the goods (*a*): and that was ruled to be felony; although they were delivered with the bill of parcels; such delivery being made under an expectation by the owner of being paid the money; for the jury found that it was a pretence to purchase, with intent to steal. Finally, the question of intention being left to the jury in the principal case, they found the prisoner guilty; and he received sentence of transportation for seven years. *Major Semple's case, O.B. Sept.* 1786. *Cor. Gould J. and Adair Serj. Rec. Sess. Pap.* 671. 2 *Leach*, 420. 2 *East's P. C.* 691.

Major Semple's case.

It may be collected from the above cases, that if a person obtain the goods of another by a lawful delivery without fraud, although he afterwards convert them to his own use, he cannot be guilty of felony. As if a tailor have cloth delivered to him to make clothes with; or a carrier receive goods to carry to a certain place; or a friend be entrusted with property to keep for the owner's use; which they afterwards severally embezzle. So if

Review of the above cases.

(*a*) It must be understood that the prisoner ran away with them, or did some other act to denote an intention of withdrawing himself from any account for them; and that no credit was intended to be given to him; but that it was meant as a sale for ready money only.

Review of cases.

plate be delivered to a goldsmith to work or to weigh, or as a deposit, his conversion of it will not be felony. But if such delivery be obtained by any fraud or falsehood, and with an intent to steal: though under pretence of a hiring, or even a purchase; if in the latter case no credit were intended to be given; the delivery in fact by the owner will not pass the legal possession so as to save the party from the guilt of felony. But if the property were intended to pass by the delivery, there can be no felonious taking. 2 *East's P. C.* 693. 1 *Hale*, 504. *Staundf.* 25. *a.* 1 *Haw. c.* 33. § 3. 1 *Show.* 50. *Kel.* 82.

"*Invito illo domino cujus res illa fuerit.*" This is of the very essence of the crime of larceny. And therefore where one *Salmon* conspired with *Macdaniel* and other persons to procure two others, ignorant of the design, to rob him on the highway, in order to procure to themselves the reward given by act of parliament for apprehending robbers on the highway; and he accordingly went, in pursuance of such agreement, to the place appointed, where the supposed robbery was effected; the case was holden not to amount to felony. *R.* v. *M'Daniel and others, O. B.* 1755. *Fost.* 121. 2 *East's P. C.* 665.

Yet in another case one *Norden*, having been informed that one of the early stage coaches had been frequently robbed near the town by a single highwayman, resolved to use his endeavours to apprehend him; for which purpose he put a little money and a pistol into his pocket, and attended the coach in a post-chaise till the highwayman approached the carriages, and presenting a weapon, demanded the money of the passengers. *Norden* gave him his money; and then jumping out of the chaise with a pistol in his hand, with the assistance of some others, took the highwayman. This was ruled clearly to be robbery, and the felon was convicted. For this case differed widely from the former: there was no previous concert with the highwayman directly or through the medium of others that the robbery should be effected, or any thing to lessen the danger of the attempt. *Norden's case, O. B.* 1754. *Fost.* 129.

The owner of goods, knowing of an intention in the prisoners to steal them, they having plotted so to do with his servant, directed his servant to carry on the business with a view to the detection of the thieves. In consequence of which the servant, with the consent of his master, agreed with the prisoners to open the outer door to them, and let them into

In *Eggington's* case, who was indicted for burglary and larceny, it appeared that the prisoners intending to rob Mr. *Boulton's* manufactory at *Soho*, had applied to one *Phillips* his servant, who was employed there as a watchman, to assist them in the robbery. *Phillips* assented to the proposal of the prisoners in the first instance; but immediately afterwards gave information to Mr. *Boulton*, the principal proprietor, and in whom the property of the goods taken (together with other persons his partners) was laid, *telling him what was intended, and the manner and time the prisoners were to come; that they were to go into the counting-house, and that he was to open the door into the front yard for them.* In return, Mr. *Boulton* told him *to carry on the business;* that he (*Boulton*) would *bear him harmless; and Mr.* Boulton *also consented to his opening the door leading to the front yard, and to his being with the prisoners the whole time.* In consequence of this information, Mr. *Boulton* removed from the counting-house every thing but 150 guineas and some silver ingots, which he marked to furnish evidence against the prisoners; and lay in wait to take them, when they should have accomplished their purpose. On the 23d of *December*, about one o'clock in the morning, the

prisoners came, and *Phillips* opened the door into the front yard, through which they went along the front of the building, and round into another yard behind it, called the middle yard, and from thence they and *Phillips* went through a door which was left open, up a staircase in the centre building leading to the counting-house and rooms where the plated business was carried on: this door the prisoners bolted, and then broke open the counting-house, which was locked, and the desks, which were also locked; and took from thence the ingots of silver and guineas. They then went to the story above into a room, where the plated business was carried on, and broke the door open and took from thence a quantity of silver, and returned down stairs; when one of them unbolted the door at the bottom of the stairs which had been bolted on their going in, and went into the middle yard; where all (except one who escaped) were taken by the persons placed to watch them. On this case two points were made for the prisoners; *first*, that no felony was proved, as the whole was done with the knowledge and assent of Mr. *Boulton*, and that the acts of *Phillips* were his acts. *Secondly*, that if the facts proved amounted to a felony, it was but a simple larceny, as the building broke into was not the dwelling-house of any of the persons whose house it was charged to be; and that there was no breaking, the door being left open. After conviction, the case was argued before the judges in the Exchequer Chamber; and all the judges agreed that the prisoners were not guilty of the burglary. But with respect to the larceny, a majority thought there was no assent in *Boulton*: that his object being to detect the prisoners, he only gave them a greater facility to commit the larceny than they otherwise might have had: and that this could no more be considered as an assent, than if a man, knowing of the intent of thieves to break into his house, were not to secure it with the usual number of bolts. That there was no distinguishing between the degrees of facility a thief might have given to him. That it could only be considered as an apparent assent. That *Boulton* never meant that the prisoners should take away his property. And the circumstance of the design originating with the prisoners, and *Boulton*'s taking no step to facilitate or induce the offence until after it had been thought of, and resolved on by them, formed with some of the judges a very considerable ingredient in the case; and differed it much from what it might have been if *Boulton* had employed his servant to suggest it originally to the prisoners. *Lawrence* J. doubted whether it could be said to be done *invito domino*, where the owner had directed his servant to carry on the business; to open the door; and meant that the prisoners should be encouraged by the presence of that servant and that by his assistance they should take the goods so as to make a complete felony; though he did not mean they should carry them away. Finally the prisoners were recommended to mercy on condition of being transported for seven years, the punishment they would have been liable to for the larceny. *Rex* v. *Eggington and others, Staffordshire Spr. Ass.* 1801. *MS. C. C. R.* 2 *East's P. C.* 666. 496. 2 *Leach*, 913. 2 *Russ.* 1048. 2 *Bos. & Pull.* 508. *See the case of Donally and Vaughan*, Vol. I. p. 11. 2 *Marsh*, 571. 1 *Russ.* 40. 2 *Russ.* 1047.

Eggington's case.

the house, where they broke open inner apartments and took the goods. Held larceny by a majority; one doubting, because of the owner's assent and partial encouragement to the felony by means of his servant.

And carrying away.] The least removing of the thing taken from the place where it was before, is sufficient for this purpose,

What shall be deemed a carrying away.

though it be not quite carried off. And upon this ground, the guest, who having taken off the sheets from his bed, with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny. So also was he, who having taken an horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. And such was the case of him who, intending to steal plate, took it out of the trunk wherein it was, and laid it on the floor, but was surprised before he could remove it any further. 2 *Haw. c.* 33. § 18. 2 *East's P. C.* 555.

Henry Coslet was indicted for stealing a quantity of currants which were packed in the fore-part of a waggon, and the prisoner had laid hold of this parcel of currants, and had got near the tail of the waggon with them when he was apprehended; the parcel was afterwards found near the middle of the waggon. On this case being referred to the twelve judges, they were unanimously of opinion that as the prisoner had *removed* the property from the spot where it was originally placed with intent to steal, it was a *taking and carrying away*. *Coslet's case, O. B. Feb.* 1782. 1 *Leach*, 236. 2 *East's P. C.* 556.

Cherry's case.

But where *William Cherry* was indicted (*Oxford, Lent Ass.* 1781, and *East. term* 1781.,) for stealing a wrapper and some pieces of linen cloth; and it appeared that the linen was packed up in the wrapper in the common form of a long square, which was laid length-way in a waggon: That the prisoner set up the wrapper on one end in the waggon for the greater convenience of taking the linen out, and cut the wrapper all the way down for that purpose; but was apprehended before he had taken any thing: all the judges agreed that this was no larceny; although his intention to steal was manifest. For a carrying away in order to constitute felony must be a removal of the goods from the place where they were; and the felon must for the instant at least have the entire and absolute possession of them.

One had his keys tied to the strings of his purse in his pocket, which *Elizabeth Wilkinson* attempted to take from him, and was detected with the purse in her hand; but the strings of the purse still hung to the owner's pocket by means of the keys. This was ruled to be no asportation: the purse could not be said to be carried away, for it still remained fastened to the place where it was before. *Wilkinson's case*, 1 *Hale*, 508. 2 *East's P. C.* 556. 1 *Leach*, 321. (n.)

So where *A.* had his purse tied to his girdle, and *B.* attempting to rob him, in the struggle the girdle broke, and the purse fell to the ground; *B.* not having previously taken hold of it, nor picking it up afterwards, it was ruled to be no taking. 1 *Hale*, 533.

In the conference upon *Cherry's* case above referred to, *Eyre* B. mentioned a case before him, where goods in a shop were tied to a string, which was fastened by one end to the bottom of the counter. A thief took up the goods and carried them towards the door as far as the string would permit, and was then stopped: this he held not to be a severance, and consequently no felony.

R. v. Lapier, A momentary possession.

James Lapier was convicted (*O. B. May* 1784,) of robbing Mrs. *Hobart* on the highway, and taking from her person a diamond ear-ring. The fact was, that as Mrs *H.* was coming out

of the opera-house she felt the prisoner snatch at her ear-ring and tear it from her ear, which bled, and she was much hurt: but the ear-ring fell into her hair; where it was found after she returned home. Judgment being respited for the opinion of the judges, whether this were such a taking from the person as to constitute robbery; they were all of opinion that it was. It being in the possession of the prisoner for a moment, separate from the lady's person, was sufficient, although he could not retain it, but probably lost it again the same instant: and it was taken by violence. 2 *East's P. C.* 557. 1 *Leach*, 320. *Tr. T.* 1784.

though lost again in the same instant, the thing being found about the owner's person, is sufficient.

But in the case of *Edward Farrell*, who upon an indictment for robbery was found to have stopped the prosecutor as he was carrying a feather bed on his shoulders, and told him to lay it down or he would shoot him; on which the prosecutor laid the bed on the ground; but before the prisoner could take it up so as to remove it from the spot where it lay, he was apprehended; the judges were of opinion that the offence was not completed, and the prisoner was discharged. *Farrel's case, O. B. July*, 1787. 1 *Leach*, 322. 2 *East's P. C.* 557.

Where two persons had hold of a bag, which they were at the same time endeavouring to pull out of a boot of a coach, but dropt it on being interrupted by the guard, this was held a sufficient removal.

R. v. *James Walsh, MS. C. C. R.* The prisoner was tried at the *O. B. Jan. Sess.* 1824, before Mr. *Denman, Common Serjeant*, for stealing a leathern bag containing small parcels the property of *William Ray*, the guard to the *Exeter* mail. It appeared that the bag was placed in the front boot of the coach, and the prisoner sitting on the box took hold of the upper end of the bag and lifted it up from the bottom of the boot, on which it rested. He handed the upper part of the bag to a person who stood beside the wheel on the pavement, and both had hold of it endeavouring to pull it out of the boot with a common intent to steal it. Before they were able to obtain complete possession of the bag, but while engaged as above mentioned they were interrupted by the guard, and dropt the bag.—The prisoner was convicted, but the facts above stated were found specially by the jury in answer to questions put to them by the *Common Serjeant*. The question propounded to the judges was, whether the prisoner could be said to have stolen, taken, and carried away the bag? The judges present (*East, T.* 1824,) thought there was a sufficient removal, and could not distinguish this from *Vane's case, Worcester Summer Assizes*, 1804, before Mr. J. *Lawrence*, and afterwards before the judges in *Mich.* term following, and that therefore *Walsh* was rightly convicted.

The offence is complete where the thief once takes possession of the thing, though he afterwards returns it.

If the thief once take possession of the thing, the offence is complete, though he afterwards return it. As if a robber finding little in a purse which he had taken from the owner, restore it to him again, or let it fall in struggling, and never take it up again, having once had possession of it. 1 *Hale*, 533. 3 *Inst.* 69. 2 *East's P. C.* 557.

Or as in *Peat's* case, who having robbed Mr. *Downe* of his purse returned it again, saying, 'if you value your purse take it back again, and give me the contents; but before Mr. *D.* could do this his servant secured the robber: the offence was ruled to be complete by the first taking. *Peat's case, O. B.* 1781, *Cor. Hotham* B. *and Willes* J. 2 *East's P. C.* 557.

Where distinct asportations by several.

Where it is one continuing transaction, though there be several distinct asportations in law by several persons, yet all may be in-

dicted as principals who concur in the felony before the final carrying away of the goods from the virtual custody of the owner. 2 *East's P. C.* 557.

By whom larceny may be committed. Joint tenants.

By any person.] Regularly a man cannot commit felony of the goods wherein he hath a property. 1 *Hale*, 513.

If *A.* and *B.* be joint tenants or tenants in common of a horse, and *A.* take the horse possibly *animo furandi*, yet this is not felony. 1 *Hale*, 513.

A man stealing his own goods.

But under certain circumstances a man may commit felony of his own goods; as if *A.* bail goods to *B.*, and afterwards *animo furandi* steal the goods from *B.* with design to charge him for the value of them: this is felony. *Staunf.* 26. 1 *Hale*, 513. 2 *East's P. C.* 558.

So if *A.*, having delivered money to his servant to carry to a certain place, disguises himself and robs the servant on the road, with intent to charge the hundred, this is robbery in *A.* 2 *East's P. C.* 558.

If a man steal his own goods from his own bailee, though he has no intent to charge the bailee, but his intent is to defraud the king, yet if the bailee had an interest in the possession and could have withheld it from the owner, the taking is a larceny. As if the bailee were bound to the crown for a specific appropriation of the goods.

Rex v. *Nowell Wilkinson and Joseph Marsden, O. B. October Sess.* 1821. *Cor. Park* J. Present Ld. C. J. *Abbott. MS. C. C. R.* The prisoners were indicted for stealing 6696 pounds' weight of *nux vomica*, value 30*l.*, the property of *James Marsh, Henry Coombe*, and *John Young*, in a certain boat belonging to them, in the port of *London*, being a port of entry and discharge. Upon the evidence, the case was thus; the prosecutors are lightermen and agents, and were employed by a Mr. *Cooper*, a merchant, who delivered them the warrants filled up, to enable them to pass the *nux vomica* through the custom-house, for exportation to *Amsterdam*. The quantity was 30 bales of *nux vomica*, consisting of 750 bags. For *exportation* this commodity pays no duty; but for *home consumption*, there is a duty of 2*s.* 6*d.* on the pound weight; though the article itself is not worth above one penny per pound. Messrs. *Marsh & Co.* entered the bales for a vessel about to sail to *Amsterdam*, called the *York Merchant*, then lying in the London Docks; and having done what was necessary, delivered back the cockett, bill and warrants to *Cooper*, *considering him as the owner; and Marsh and Co. gave bond to government, with Cooper, under a penalty to export these goods. Marsh & Co.* were to be paid for lighterage and for their services. After this Messrs. *Marsh & Co.* employed the prisoner *Wilkinson* as their servant, who was a lighterman, (and who had originally introduced *Cooper* to them to do the needful respecting the *nux vomica*), to convey the goods from *Bow Creek*, where they were, to the *York Merchant*, at the *London Docks*, and *lent their boat, with the name of Marsh & Co. upon it, to enable him so to do. Wilkinson*, the prisoner, accordingly went and got the *nux vomica* by an order, commanding the person who had the possession of it to deliver it to Mr. *John Cooper*. The bales were marked C. 4. to 33. When *Wilkinson* received the cargo, instead of taking it to the *York Merchant*, he, one *William Marsden*, and the other prisoner, *Joseph Marsden*, took the boat to a Mr. *Browns*, a wharfinger at *Lea Cut*, in the county of *Middlesex*, and there unloaded it into a warehouse which *William Marsden* had hired three weeks before, and which they had used once before; and there the two prisoners and *William Marsden* were employed 18 hours in unpacking the bales, taking out the *Nux Vomica*, repacking it in smaller sacks,

and sending it by a waggon to *London* and refilling the *market bales* with cinders and other rubbish which they found on the wharf. The prisoner, *Wilkinson*, then put the bales of cinders, &c. on board the boat, took them to the *York Merchant*, hailed the vessel, and said he had 30 bales of *Nux Vomica*, which were put on board and remained so for two or three days, when the searcher of the customs discovered the fraud. *Marsh & Co. admitted that they had not been called on for any Duties, nor sued upon their bond, though the bond still remains uncancelled.* The defence was, and proved by *Cooper*, that the goods were not his; that he had, at *William Marsden's desire*, lent his name to pass the entry; that he had done so, but did not know why; and he swore he did not know it was a smuggling transaction, or that the object was to cheat government of the Importation Duties. If these were to be considered as the goods of *Cooper*, then it should seem a felony was committed upon them by *Wilkinson* and the two *Marsdens*, by taking them in the manner described out of the hands of *Marsh & Co.* without their knowledge or consent, who, as lightermen or carriers, had a special property in them, and who were also liable to Government to see to the due exportation of them, Even if they were the goods of *William Marsden*, who superintended the shifting of them from the bales to the sacks, the question is, whether this can be done by an owner against a special bailee, who has made himself responsible that a given thing shall be done with the goods, and which the owner, without the knowledge or consent of such bailee, has, by a tortious act, entirely prevented. The learned judge told the jury, that Lord C. J. *Abbott* and he wished to take the opinion of the judges upon this question, but desired them to say whether they thought the *general* property in the goods was in *Cooper*, or *W. Marsden*. The jury found the prisoners guilty, and that the property was *W. Marsden*'s. On Case, four judges doubted whether this were larceny, because there was no intent to cheat *Marsh & Co.*, or to charge them, but the intent was to cheat the crown; but seven judges (*absente Best* J.) held it a larceny, for *Marsh & Co.* had a right to the possession; till the goods reached the ship, they had an interest in that possession; the intent to deprive them of their possession wrongfully and against their will, was a felonious intent as against them, because it exposed them to a suit upon their bond, and had there been no intent, as against them, the intent to cheat the Crown was, in the opinion of most of the seven judges sufficient to make it a larceny.

Rex v. Wilkinson and Marsden.

Rex v. *Phœbe Bramley, MS. C. C. R.* The prisoner was convicted before *N. G. Clarke, Esq. K. C.* at *Derby Lent Ass.*, 1822, upon an indictment for burglary in the dwelling-house of *Thomas Noon*, at *Ilkeston*, in that county, and stealing a box, two purses, 22*l*. 10*s*. in silver, 6*s*. 3*d*. in copper, a promissory note for the payment of 10*l*., and eighteen promissory notes for the payment of 1*l*. each, the property of the said *Thomas Noon*. In another count the property was stated to belong to *Sarah Sisson, Ann Fretwell*, and *Ann Noon*. The box and the other articles (which were in the box when taken by the prisoner) were the property of a Female Friendly Society, established under the statute of the 33 *G*. 3. *c*. 54. of which the rules, orders, and regulations have been exhibited to and allowed and confirmed by the Sessions as directed by that

If the owner, or part owner, of goods steal them from the person in whose custody they are, and who is responsible for their safety, he is guilty of larceny.

Rex v. Phœbe Bramley. statute. The society held their meetings at a public-house kept by the said *Thomas Noon*. The funds of the society were kept in the box; the box with such funds in it was always, after the meeting of the society broke up, deposited in a bed chamber in the house of the said *Thomas Noon*. The said *Sarah Sisson*, *Ann Fretwell*, and *Ann Noon*, were Stewardesses of the Society appointed according to its rules. The box, as directed by the rules of the society, had three different locks upon it, each Stewardess having one key. The Stewardesses are by the rules to serve for one year, and then to resign their keys, cash, and books to the new stewardesses. It is directed by the rules of the society, that the box shall remain in the custody of the landlord of the house, or any other person whom the society shall appoint, he being responsible for whatever effects were lodged therein. The society met the evening the offence was committed, and the box, with the funds in it, was, after the meeting broke up, deposited in the usual place in *Thomas Noon*'s house, from whence it was afterwards taken by the prisoner, who gained admission to the chamber by means of a ladder, and breaking open the window. The prisoner had been for some time a member of the society. One of the rules of the society is, that each member shall pay sixpence to the stock every fourth Monday, and if a member fail to pay for four successive nights, she shall be excluded. The prisoner had failed to pay for four successive nights, the last of which was the night the property was taken, but no order for excluding her had been made by the society. A doubt arose whether, considering the situation the prisoner stood in with respect to the property taken, the conviction was proper. And on Case, ten judges (two absent) were clear that as the landlord was responsible to the society for the property, the conviction was right.

Wife. A wife may be guilty of larceny by stealing the goods of a stranger; but not by stealing her husband's goods from his own possession, because in law they are considered but as one person, and she has a kind of interest in his goods. On which account not even a stranger can commit larceny of such by the delivery of the wife, although he knew they were the husband's goods. 1 *Haw. c.* 33. § 19. 2 *East's P. C.* 558.

Nathaniel Harrison was indicted for stealing some plate: and it appearing that the prosecutor's wife had the constant keeping of the key of the closet where the plate was usually locked up, and that the prisoner could not have taken it without her privity and consent, (which appeared probable from other circumstances; although no direct evidence of the fact could be produced;) the Court thinking that it might be presumed that he had received it from her, directed him to be acquitted; which was accordingly done. *Harrison's Case, O. B. Feb.* 1756. 2 *East's P. C.* 559.

But a wife may steal the goods of her husband which have been bailed or delivered to another person; for he has a temporary special property in them. 1 *Hale*, 513.

The wife cannot commit larceny in the company of her husband; for it is deemed his coercion and not her own voluntary act. Yet if she do it in his absence and by his mere command, she is then punishable as if she were sole. 1 *Hale*, 45. *Staunf.* 26.

If a woman insist that she is the wife of the man in whose company the felony was committed, she may be indicted by her

husband's name and her own, with an *alias* and the addition of a spinster; and it will lie upon her to prove her coverture, or else she may be found guilty. 2 *East's P. C.* 559. Wife.

It is said by Mr. *Dalton* and others, that it is no felony for one reduced to extreme necessity to take so much of another's victuals as will save him from starving; but this can never be admitted as a legal defence in a country like this, where such humane laws prevail for the care and maintenance of the poor. Even if the case existed in fact, it would in truth be but little excuse that the party preferred this method of satisfying his necessity, rather than apply to the persons charged with carrying those laws into execution, because perhaps of some trouble or apprehension of reproof. Yet still in apportioning the punishment, the court will have a tender regard to cases of real necessity, which may and do sometimes exist under the best regulated governments. A false sense of shame has sometimes tempted persons, otherwise well disposed, to the commission of these offences. Sometimes, it is to be feared, they have been driven to it by the cruel and unfeeling conduct of others, who are in such instances more just objects of severity than the unhappy sufferers. 2 *East's P. C.* 699. Stealing through extreme necessity

If one stealeth another man's goods, and afterwards another stealeth the same from him; the owner may charge the first or second felon at his choice. *Dalt. c.* 162. One thief stealing from another.

Thomas Jones was indicted for stealing five pheasants restrained of their natural liberty, the property of *A. Fountain*. It appeared on the evidence that *Fountain* was an alehouse-keeper, and not a qualified person to keep or to shoot game; and that he bred these pheasants for sale. And it was objected on behalf of the prisoner, that *F.*, not being a qualified person, could have no property in the pheasants, nor any legal possession sufficient to support the indictment; that by the several statutes relating to the game laws, unqualified persons are forbidden, under certain penalties, to have pheasants in their possession, and that by one of those statutes authority is given to a justice of the peace to *take away* from such person any pheasant he may have in his possession. But *Grose* J. held that it was sufficiently legal possession for the purposes of the indictment, and the prisoner was convicted. *Jones's case, Buckingham Lent Ass.* 1809. *cor. Grose* J. *MS.* (*K.*) Stealing pheasants from an unqualified person.

An alien, whose sovereign is in amity with the crown of *England*, residing here, and receiving the protection of the law, oweth a local allegiance to the Crown during the time of his residence, and if, during that time, he committeth an offence, he shall be liable to be punished for the same, even as a natural-born subject. For his person and personal estate are as much under the protection of the law as the natural-born subject's; and if he is injured in either, he hath the same remedy at law for such injury. *Fost.* 185. Alien.

So also, an alien whose sovereign is at enmity with us, living here under the king's protection, committing offences, may be proceeded against in like manner; for he oweth a temporary local allegiance, founded on that share of protection he receiveth. *Fost.* 185.

Of the mere personal goods.] *Mere:* for if the personal goods savour any thing of the realty, it cannot be larceny. They ought Stealing goods that savour of the realty.

to be no way annexed to the freehold; therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree. But it is larceny to take them, being severed from the freehold, as wood cut, grass in cocks, stones digged out of the quarry; and this, whether they are severed by the owner or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 *Haw. c.* 33. § 21. 1 *Hale*, 510.

Thus though, "if a thief severs a copper, and instantly carries "it off, it is no felony at common law; if *indeed* he lets it remain "after it is severed any time, then the removal of it becomes a "felony, if he comes back and takes it; and so of a tree which "has been some time severed." *Per Gibbs* C. J. in *Lee* v. *Risdon*, *M. T.* 57 *G.* 3. 7 *Taunt.* 191.

4 G.2. c.32. Stealing lead, iron, &c. affixed to buildings, felony, and punishable by transportation for seven years.

But by stat. 4 *G.* 2. *c.* 32. It is enacted, "*that all and every* "*person and persons who shall steal, rip, cut, or break, with intent* "*to steal, any lead, iron-bar, iron-gate, palisadoe, or iron-rail* "*whatsoever, being fixed to any dwelling-house, out-house, coach-* "*house, stable, or other building, used or occupied with such dwell-* "*ing-house, or thereunto belonging, or to any other building what-* "*soever, or fixed in any garden, orchard, court-yard, fence, or* "*outlet belonging to any dwelling-house or other building, shall be* "*deemed and construed to be guilty of felony;*" and shall be subject to the like pains and penalties as in cases of felony, and that the court may transport such felons for the space of seven years. And also, that "*all and every person and persons who* "*shall be aiding, abetting, or assisting in stealing, or in such rip-* "*ping, cutting, or breaking any lead, iron-bar, iron-gate, iron-* "*palisadoe, or iron-rail fixed to any dwelling-house, out-house,* "*coach-house, stable, or other building; or fixed in any garden,* "*orchard, court-yard, fence, or outlet, belonging to any dwelling-* "*house, or other building, or who shall buy or receive any such* "*lead, iron-bar, iron-gate, iron-palisadoe, or iron-rail, knowing the* "*same to be stolen, shall be subject and liable to the same punish-* "*ments as if he, she, or they had stolen the same.*"

And persons aiding, &c. or receiving such lead, iron, &c. knowing it to be stolen, are made liable to the same punishments as if they had stolen the same.

21 G.3. c.68. Stealing or removing with intent to steal any copper, brass, or bell-metal, fixed to houses, &c. also made felony.

This act was explained and amended by a subsequent statute, 21 *G.* 3. *c.* 68., which, after reciting that the former act did not prohibit and make punishable the stealing of copper, brass, and bell-metal affixed to dwelling-houses, and the appurtenances thereto, enacts, "*that all and every person and persons who shall steal, rip,* "*cut, break, or remove, with intent to steal, any copper, brass, bell-* "*metal, utensil, or fixture, being fixed to any dwelling-house, out-* "*house, coach-house, stable, or other building, used or occupied with* "*such dwelling-house, or thereunto belonging, or to any other build-* "*ing whatsoever, or fixed in any garden, orchard, court-yard,* "*fence, or outlet, belonging to any dwelling-house, or other build-* "*ing, or any iron rails or fencing, set up or fixed in any square,* "*court, or other place, (such person having no title, or claim of* "*title thereto) shall be deemed and construed to be guilty of felony,*" and the court may transport such felons for the term of seven years, or may order such offender to be kept in prison, and therein kept to hard labour for any time not exceeding three years, nor less than one year, and within that time, if such court shall think fit, such offender shall be once, or oftener, but not more than three times, publicly whipped. And it further enacts, that "*all* "*and every person and persons who shall be aiding, abetting, or*

And the offenders may be transported, or imprisoned and whipped.

And persons aiding, &c. or buying, or re-

"*assisting, in stealing, or in such ripping, cutting, breaking, or* 21 G. 3. c. 68.
"*removing any copper, brass, bell-metal, utensil, or fixture, fixed*
"*to any dwelling-house, out-house, coach-house, stable, or other*
"*building, or fixed in any garden, orchard, court-yard, fence, or*
"*outlet, belonging to any dwelling-house or other building, or any*
"*iron rails or fencing set up or fixed in any square, court, or*
"*other place; or who shall buy or receive any such copper, brass,*
"*bell-metal, utensil, or fixture, iron rails, or fencing, knowing the*
"*same to be stolen, shall be subject and liable to all and every the*
"*same punishments, pains, and penalties, as if he, she, or they, had*
"*stolen the same, although the principal felon or felons has not*
"*or have not been convicted of stealing the same.*"

Persons receiving such copper, brass, &c. knowing them to be stolen, are made liable to the same punishments.

Stealing window sashes.

Fixed to any dwelling-house.] The prisoner was indicted, *O. B. May* 1779, for stealing six light glazed window sashes. The window frames from which they were taken were fixed into their proper places; but the sashes were neither hung nor beaded in the frames, but were fastened in by laths nailed across the frames to prevent their falling out. The court (Mr. J. *Willes*, Mr. B. *Hotham*, and Mr. Serjeant *Glynn*,) ruled, that they were not fixed to the freehold. *Hedge's case*, 1 *Leach*, 201. 2 *East*, *P. C.* 590. (*n.*)

Casements.

So in the case of *J. Senior*, who was indicted, *O. B. September* 1788, for stealing *a window casement made of iron, lead, and glass*, the property of the benchers of the *Middle Temple*, fixed to a certain building, &c. The court (Mr. J. *Gould*, Mr. J. *Grose*, Mr. B. *Hotham*, and *Adair* Serjeant, recorder,) held, that the case was not within the acts; for they do not mention "*a casement.*" The prisoner was afterwards indicted for a similar offence at the *December* sessions following, before *Wilson* J. and acquitted on the authority of the above case. *Senior's case*, 1 *Leach*, 496. 2 *East's P. C.* 593.

The words "*other building*" extend to a church.

Or other building, &c.] It has been holden that the stat. 4 *G.* 2. *c.* 32. extends to a church. This was the opinion of a majority of the judges, though there was some doubt whether the words "*other building*" in the act ought not to be construed with reference to the same sort of buildings as was before expressed. *Rex* v. *Parker and Easy*, *Suffolk Sum. Ass.* 1782. & *M. T.* 1782. 2 *East's P. C.* 592.

And in a case which occurred shortly afterwards, the judges were unanimous upon the point, that a church is included within the words "*any other building whatsoever.*" *R.* v. *Hickman and Dyer*, *O. B.* 1784. 2 *East's P. C.* 593.

Iron rails of a tombstone.

But where the prisoner was charged upon an indictment on the same statute, with stealing iron rails fixed to a tomb in a church-yard, belonging to a certain building called *Islington* church, and it appeared that the tomb was not connected by any building to the church; it was holden by all the judges that the offence laid was not within the statute. *Davis's case*, *O. B. Jan.* 1792. 2 *East's P. C.* 593.

Lead fixed to a church.

In the case of *Parker* and *Easy*, *supra*, it was agreed by all the judges, that the property of lead fixed to a church cannot be laid to be either in the churchwardens, or in the inhabitants and parishioners. And this opinion seems to have been confirmed in the case of *Hickman* and *Dyer*, *supra*, where the first count of the indictment was for stealing lead "*belonging to the Reverend*

C. G. *Clerk, then and there fixed to a certain building called* Hendon *church;*" the second count stated the lead as "*belonging to* J. B. and R. M. *the churchwardens;* and the third stated it as "*belonging to the inhabitants and parishioners:*" but a majority of the judges there held that the first count of the indictment which laid the property of the lead to be in the vicar was good. Many of them, however, thought that it would have been better to have alleged, that the lead was "fixed to a certain building being the parish church, &c." without stating the property to be in any one: and *Buller* J. thought that charging it to be property was absurd and repugnant, and that the allegation as to property in that indictment might be rejected as surplusage. *Watson*, 398, 399, 400.

Bells, books, or other goods belonging to a church.

Mr. *Russell* (2 *Russ.* 964.) observes, that the decisions and opinions in these cases probably turned upon the particular nature of the property which had been stolen. For it has been holden that where the bells, books, or other goods belonging to a church are stolen, they may be laid in the indictment to be the goods of the parishioners. (*Post*, 253.) And it is said, that he who takes away the goods of a chapel or abbey, in time of vacation, may be indicted in the first case, for stealing *bona capellæ*, being in the custody of such and such; and in the second, for stealing *bona domûs vel ecclesiæ, &c.* 2 *East's P. C.* 651. 1 *Hale*, 512.

Images, lead, &c. attached to summer-houses, &c.

Leaden images on pedestals fixed in the ground near a summer-house are not within stat. 4 *G.* 2. *c.* 32. *Case of Richards and Lowe, cor. Best Serjt. Hertford Lent Ass.* 1802, *and before the Judges in May*, 1802. *MS. C. C. R.*

Indictment for stealing lead (first count) in a certain building, belonging to Lord *Clarendon*'s dwelling-house; second count, for stealing lead in an outlet, belonging to a certain building called the *Temple of Pan;* third, for stealing lead in an outlet belonging to a certain building; fourth, fifth, and sixth, the like only stating it to be in a garden.

The lead was the substance of three images standing on pedestals, fixed in the ground near a brick-building, used occasionally as a tea-house, and erected in an inclosed field of Lord *Clarendon*'s, half a mile from his dwelling-house, and without the park pales, from which it was separated by a road. The judges held this no felony.

Summer-house.

A summer house used occasionally for tea and refreshment, within the same inclosure as the house, though at the distance of half a mile, is a building within stat. 4 *G.* 2. *c.* 32.

All buildings are within stat. 4 G. 2.

All buildings are within 4 *G.* 2.

Therefore an indictment for stealing lead fixed to a certain building, without further description, is good.

The prisoner was indicted for stealing lead (in first count) fixed to a certain building called a Temple, used and occupied with the dwelling-house of *I. S.;* (in second count) fixed to a certain building, without further description. The building was a temple in *Tring-park*, about half a mile from the house, but without any fence between, used occasionally for tea and refreshment as a summer-house. A doubt arose whether the building must not be *ejusdem generis* with those mentioned in the act; but, on case reserved, the conviction was *held right on both counts. R.* v. *Norris, cor. Heath* J., *Hertford Sum. Ass.* 1803. (or *Lent* 1804.) *and afterwards before all the Judges, MS. C. C. R.*

Where the prisoner had obtained fraudulent possession of a house, upon an agreement for a lease, and stripped it of the leaden pipes, &c. it was holden to be within stat. 4 *G.* 2. *c.* 32. *Munday's case*, 2 *Leach*, 850. 2 *East's P. C.* 594.

Petit larceny is within these acts. Thus, where one was indicted at the *O. B. Jan.* 1775, on the 4 *G.* 2. for stealing lead, and found guilty to the value of 10*d.* he had judgment to be whipped.

Petit larceny within stats. 4 G. 2. and 21 G. 3.

With regard to domestic animals, such as horses (*a*), oxen (*b*), sheep (*c*), and the like, there is no doubt whatever that they were the subjects of larceny at common law. And the stealing of many of these animals has been made a capital offence, by the provisions of several statutes, which have been or will be treated of under their respective titles. Domestic birds also, as ducks, hens, geese, turkeys, peacocks, &c. are clearly the subjects of larceny. So also larceny may be committed of their eggs or young ones. 2 *Russ.* 1123. 1 *Hale*, 511. 1 *Haw. c.* 33. § 43.

Domestic animals.

It is however certain, that larceny cannot be committed of such animals in which there is no property, as of beasts that are *feræ naturæ* and unreclaimed; such as deers, hares, and conies in a forest, chase, or warren; fish in an open river or pond; old pigeons out of the house; or wild fowls at their natural liberty; although any person may have an exclusive right *ratione loci aut privilegii* to take them if he can in those places. But if they are dead, reclaimed, and known to be so, or confined and may serve for food, it is otherwise even at common law. For of deer (*d*) so inclosed in a park, which may be taken at pleasure; fish (*e*) in a trunk or net, or as it should seem in any other inclosed place which is private property, and where they may be taken at the pleasure of the owner at any time; pheasants or partridges in a mew; young pigeons, or old ones when shut up; young hawks in a nest, and even old ones, or falcons reclaimed and known by the party to be so; larceny may be committed. The same as to peacocks: so of swans marked and pinioned, or swans unmarked, if tame, kept in a mote, pond, or private river: but if they range out of the royalty, it is no felony to take them though marked, because it cannot be known that they belong to any person. Nor can larceny be committed of the eggs of these, or of hawks; because the stat. 11 *H.* 7. *c.* 17. has appointed a less punishment, namely, fine and imprisonment. 2 *East's P. C.* 607. 3 *Inst.* 109. 110. 4 *Blac. Com.* 235. 236. 1 *Hale*, 510, 511. 1 *Haw. c.* 33. § 25. to 28. *Hal. Sum.* 67, 68. *Davies* v. *Powell*, *Will. Rep.* 49. But the stealing a stock of bees seems to be admitted to be felony. *Tibbs* v. *Smith*, *T. Ray.* 33.

Animals *feræ naturæ*.

Vide stat. 37 Ed. 3. c. 19. 3 Inst. 97, 98, 99. 1 Hale, 642.

John Rough being convicted on an indictment for stealing a pheasant, value 40*s.*, of the goods and chattels of *H. S.*; all the Judges on a second conference in *Easter* term 1779, after much debate and difference of opinion, agreed that the conviction was bad; for in cases of larceny of animals *feræ naturæ*, the indictment must shew that they were either dead, tame, or confined; otherwise they must be presumed to be in their original state;

(*a*) See *tit.* Horses, Vol. II.
(*b*) See *tit.* Cattle, Vol. I.
(*c*) See *tit.* Sheep, Vol. V.
(*d*) See *tit.* Game, Vol. II.
(*e*) See *tit.* Fish, Vol. II.

and that it is not sufficient to add "of the goods and chattels" of such an one. *Rough's case, Surrey Lent. Ass.* 1779. 2 *East's P. C.* 607.

Animals of a base nature.

But there are some animals, which though they may be reclaimed, yet are considered of so base a nature, that no larceny can be committed of them; such as bears, foxes, monkies, cats, ferrets, and the like. And the same rule applied to dogs; but now by stat. 10 *G.* 3. *c.* 18. the stealing of dogs is made punishable upon conviction before two justices. 2 *East's P. C.* 614. See title Dogs, Vol. I.

Ferrets are animals of a base nature, and not the subject of larceny.

Ferrets.] *John Searing* was indicted for stealing "five live tame ferrets, confined in a certain hutch, &c." the property of *Daniel Flower*. The evidence brought the fact of taking the ferrets, clearly home to the prisoner, and it was also proved that ferrets are valuable animals, and that those in question were sold by the prisoner for nine shillings. But, the jury having found the prisoner guilty, the case was submitted to the consideration of the judges upon the question whether ferrets must be considered as animals of so base a nature (*a*) that no larceny can be committed of them. And the judges held the conviction wrong. *Searing's case. Hertford Lent Ass.* 1818. *cor. Wood B. MS. C. C. R.*

The goods must be of some value.

Also the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen; as paper or parchment on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt, or other *chose* in action. 1 *Haw. c.* 33. § 22.

8 H. 6. c. 12. Stealing records, &c.

But by stat. 8 *H.* 6. *c.* 12. If any clerk or other person shall steal any record or process belonging to any of the courts at *Westminster*, by reason whereof any judgment shall be reversed, he shall be guilty of felony.

This statute only extends to the courts expressly named, and to the court of chancery so far only as it proceeds according to the course of the common law; and it does not extend to the judges, because clerks are first named, who are inferior to them. 1 *Haw. c.* 45. § 3. 4. 7. 2 *East's P. C.* 597.

2 G. 2. c. 25. made perpetual by 9 G. 2. c. 18. Stealing of exchequer orders, or bills, South-sea bonds, bank notes, bills of exchange, &c. made felony as if goods of the like value were stolen.

And by stat. 2 *G.* 2. *c.* 25. § 3. it is enacted, "that if any "person or persons shall steal or take by robbery, any exchequer "orders, or tallies, or other orders, entitling any other person "or persons to any annuity or share in any parliamentary fund, "or any exchequer bills; bank notes, South-sea bonds, East-"India bonds, dividend-warrants of the bank, South-sea com-"pany, East India Company, or any other company, society, or "corporation, bills of exchange, navy bills, or debentures, gold-"smiths' notes for the payment of money, or other bonds, or "warrants, bills, or promissory notes for the payment of any "money, being the property of any other person or persons, or "of any corporation; notwithstanding any of the said particulars "are termed in law a *chose* in action; shall be deemed guilty of "felony of the same nature, and in the same degree, and with "or without the benefit of clergy, in the same manner as it would "have been if the offender had stolen or taken by robbery any

(*a*) The ferret was originally a native of Africa, but has for a long time been bred, kept, and sold in this country as a tame animal.

"other goods of like value with the money due on such orders, "tallies, bills, bonds, warrants, debentures, or notes, or secured "thereby, and remaining unsatisfied; and such offender shall "suffer such punishment as he or she should or might have done "if he or she had stolen other goods of the like value with the "monies due on such orders, &c. respectively, or secured thereby "and remaining unsatisfied." 2 G. 2. c. 25.

Construction of the act.

Though the statute mentions bank notes, &c. in the plural number, yet the stealing of a single bank note is within it, particularly on account of the words which follow, "notwithstanding "*any* of these particulars may be termed in law *a chose in action.*" *Hassel's case, O. B. Oct.* 1730. 1 *Leach*, 1. 2 *East's P. C.* 598.

A bill payable to order, but not indorsed.

At a conference of the judges in *Easter* term 1781, *Nares* J. mentioned that a person was convicted before him for privately stealing from the person of another a pocket book containing a note of the *Bristol* bank, signed by some one on behalf of himself and partners, promising to pay to the prosecutor or order a sum of money, but which the prosecutor had not indorsed. All the judges were of opinion that this was a capital felony within the stat. 2 *G.* 2. *c.* 25. which makes the stealing promissory notes, &c. felony, with the same consequences as goods of the like purported value; that this was a promissory note; and its not being indorsed was immaterial.

So, an indictment for stealing a bill of exchange in *London* was sustained by proof that when found in the prisoner's possession there, it had an indorsement (made afterwards) and not laid in the indictment; for the addition of a third name made no difference; it being the same bill that was originally stolen. *Austin and King's case, Leicester Lent Ass.* 1783. 2 *East's P. C.* 602.

But where one was compelled by duress to make a promissory note on stamped paper, before prepared by the prisoner, who was present during the time, and withdrew the note as soon as it was made, this was holden not to be a felony within the statute. For according to some of the judges, that is confined to available securities in the hands of the party robbed, which this was not, being of no value while in the hands of the maker himself. Yet even if it were, according to others, this was never in his possession; his signature having been procured by duress to a paper which during the whole continuing transaction was in the possession of the prisoner. *Phipoe's case*, 2 *Leach*, 673. 2 *East's P. C.* 599.

An indictment for larceny of a promissory note may describe it generally as (*ex. gr.*) "one promissory note for the payment of one guinea," without setting forth the note; and if the value of the thing stolen in the dwelling-house (including the note) be 40*s.* clergy is ousted. *Milne's case, Worcester Sum. Ass.* 1800. 2 *East's P. C.* 602. 3 *B.* & *P.* 145.

Produce of animals.

Milk.

It being felony to steal the animals themselves, it is also felony to steal the product of any of them, though taken from the living animals. Thus milking cows at pasture, and stealing the milk, was holden to be felony by all the judges, on a case reserved by Serjeant *Leigh*, who sat for Mr. J. *Bathurst* on the *Oxford* circuit about 1769. 2 *East's P. C.* 617.

Wool.

So pulling wool from the backs of sheep is felony. But in this and in the former instance it must be understood that the fact is done fraudulently and feloniously, and not merely for wanton-

ness of frolic; which must be collected from concurrent circumstances, such as the quantity taken, the use to which it is applied, the behaviour of the party, &c. *Martin's case, Northampton Lent Ass.: and E. T.* 1777. 2 *East's P. C.* 618. 1 *Leach*, 171. See also 2 *Russ*. 1123.

Special Property or Possession.

Special property or possession.

Any one who has a special property in goods stolen may lay them to be his in an indictment for larceny, as a bailee, pawnee, lessee for years, carrier, or the like; *a fortiori*, they may be laid to be the property of the respective owners, and the indictment is good either way. 2 *East's P. C.* 652. But if it appear in evidence, that the party whose goods they are laid to be, had neither the property nor the possession (and for this purpose the possession of a *feme covert* or servant is, generally speaking, the possession of the husband or master) the prisoner ought to be acquitted on that indictment. The same rule prevails in the case of goods belongin to a guest (*Jane Todd's case, O. B. July*, 1711,) stolen at an inn; they may be laid to be the property either of the innkeeper or the guest. So goods stolen from a washerwoman (*Packer's case, O. B. April*, 1714,) who takes in the linen of other persons to wash, may be laid to be her goods: by *Parker* C. J.; *Tracy* and *Bury* Js.—For persons of this description have a possessory property, and are answerable to their employers. So an agister has a possession and property against all but the right owner.

Woodward's case. Property laid in agister of cattle.

In *John Woodward's* case, *Leicester Sum. Ass.* 1796. 2 *East's P. C.* 653., who was indicted for maliciously and feloniously killing two sheep the property of *W. Dalton*, it was proved that the prosecutor had only taken the sheep in to agist for another. Whereupon it was objected that the property was not well laid in the agister; and upon reference to the judges in *M. T.* 1796, one of them doubted at first, because an agister of cattle is not liable for them at all events, like an innkeeper for the goods of his guest. The majority, however, thought the conviction right. But the matter stood over till *H. T.* 1797, when upon reference to 4 *Inst.* 293., shewing that an agister has a possession; and 2 *Roll. Abr.* 551., that he may maintain trespass against any who takes the beasts; all the judges agreed that the conviction was right.

Property laid in stage coachman.

Rex v. *Deakin and Smith, O. B. April*, 1800, *cor. Grose* J. 2 *Leach*, 875. 2 *East's P. C.* 653. *James Deakin* and *William Smith* were indicted for stealing spoons and other articles, laid in the second count, (on which alone they were convicted), to be the property of one *Markham*. The goods had been sent by a tradesman in *London* to Mr. *Broderick* at *Spalding*, by the *Spalding* coach, and were stolen by the prisoners at *Pondersend*, out of the boot behind the coach. The question was, whether they were properly laid to be the property of *Markham*, who was not the owner but only the driver of the coach, there being no contract between him and the proprietors, that he should be liable for any thing stolen, and it not appearing that he had been guilty of any laches. The case being referred to the judges, it stood over for some time, but finally the conviction was holden right, the coachman having the possession and a special property in the goods committed to his charge.

Clothes and other necessaries provided for children by their parents, are often laid to be the property of the parents, especially while the children are of tender age; but it is holden good either way. At the sessions at the *O. B.* after *E. T.* 1701, *Tracy* and *Turton* Js., and *Lovell* Recorder, doubted whether the property of a gold chain, which was taken from a child's neck, who had worn it for four years, ought not to be laid to be in the father. But *Tanner*, who had been an ancient clerk of the court, said that it had always been usual to lay it to be the goods of the child in such case, and that many indictments which had laid them to be the property of the father had been ordered to be altered by the judges. 2 *East's P. C.* 654. 12 *Rep.* 113.

Necessaries for children.

Rex v. *Eleanor Gaby*, *MS. C. C. R.*—The prisoner was tried and convicted before *Chambre* J., at *Taunton Lent Ass.* 1810, for grand larceny, in stealing some drapery goods, the property of *Benjamin Dodge* and *Sarah Chilcott*, widow. It was objected that the indictment had misdescribed the property by alleging it to be in *Benjamin Dodge* and *Sarah Chilcott*, concerning which the evidence was, that the goods had been part of the joint stock in trade of the said *Benjamin Dodge* and ——— *Chilcott*, the late husband of the said *Sarah Chilcott*, and were so at the time of *Chilcott*'s death, which happened three or four days before *Christmas* last. He died, as the witness *Dodge* understood, without a will, leaving his said widow and some young children, and no administration had been granted of his effects. But the widow, from the death of her husband, acted as partner, and regularly attended the business of the shop. The goods mentioned in the indictment were stolen on the 6th of *January*, and on the 20th of the same month a division was made of the remaining stock, the widow taking one half, and *Dodge* the other half. It was contended, on the part of the prisoner, that the children in respect of their interest under the statute of distributions, should have been named with the other two as joint proprietors, or that the property should have been alleged to be in the ordinary and the surviving partner. But the learned judge held, that the *actual possession* in *Benjamin Dodge* and *Sarah Chilcott*, as *owners*, was sufficient, upon which the prisoner was convicted; and the judges on case, held the property well laid, and therefore the conviction right.

Gaby's case. The *actual possession* of the goods by a surviving partner, and the widow of a deceased partner, holden to be a sufficient ownership.

Rex v. *Thomas Hutchinson* and *Joseph Boffey*, *MS. C. C. R.* The prisoners were tried before *Richardson* J., at *Stafford Lent Ass.* 1820. *Hutchinson* was convicted of stealing, and *Boffey* of receiving, *scienter*, *&c.*, a quantity of brass, which in the first count was laid to be the property of *Thomas Penn*, and 20 other persons therein named, and in the second count, to be the property of *Samuel Evans*. The property stolen formed the brass chandelier and sconces (not fixed to the freehold) of a chapel of protestant dissenters, and the persons named in the first count, were the trustees of the chapel; but the prosecutors were not prepared to prove the trust deed, whereby they were appointed, nor that all of them had acted in the trust or management, some of them residing at a distance. *Samuel Evans*, in whom the property was laid in the second count, stated that he was servant to the managers, and had a salary of 5*l.* a-year. That he for many years had had the care of the chapel, and of the things in

The goods in a dissenting chapel vested in trustees, cannot be described as the goods of a servant, who has merely the care of the chapel and things in it, to clean and keep in order, though he has the key of the chapel, and no other person, but the minister, has any other.

R. v. Hutchinson and Boffey.

it, to clean and keep in order. That he kept the keys, and that no person except himself had a key of the chapel, but the minister had a key of the vestry, through which he could enter the chapel. The trustees had no key. The witness received his orders sometimes from the trustees and sometimes from the minister. No one resided in the chapel. On case, the judges thought the property could not be considered as *Evans*'s, and therefore that the conviction was wrong. *E. T.* 1820.

Waifs, wreck, &c.

Of another.] It is generally said that larceny cannot be committed of that wherein none have any determinate property, as of treasure-trove, waifs, &c. till seised. The same was said of wreck; but now the legislature have, by a most just and humane statute (26 *G.* 2. *c.* 19.), protected the owners of property in this state against the odious plunderers of it. And indeed there seems to be some incorrectness in the generality of the position with respect to the other things mentioned. As to waifs, treasure-trove, &c. the lord has no determinate property in them till seisure; but the true owner, though unknown, who has lost or been robbed of the things themselves, has still a property in them. 1 *Haw. c.* 33. § 24. 1 *Hale*, 510. 2 *East's P. C.* 606. 2 *Russ.* 1138. Also 1 & 2 *G.* 4. *c.* 75. § 12. 15. 22. 23.

Where indeed the circumstances of the case furnish a presumption of an intended dereliction of such property on the part of the owner, there no larceny can be committed before seisure by the lord, because the taking is not *invito domino.*

Ownership where the person of the owner is unknown.

It is well settled that larceny may be committed by stealing goods, the owner of which is *not known:* and that it may be stated in the indictment that the things stolen were the goods of a person to the jurors unknown. But upon prosecutions of this kind, some proof must be given sufficient to raise a reasonable presumption that the taking was felonious, or *invito domino;* and Ld. *Hale* C. J. said, that he never would convict any person for stealing the goods *cujusdam ignoti*, merely because the person would not give an account how he came by them, unless there were due proof made that a felony had been committed of those goods. See 2 *Russ.* 1139. 1 *Hale*, 512. 2 *Hale*, 290. It is said, therefore, 2 *East's P. C.* 651., with respect to these cases, that the true ground upon which persons so indicted may, in any instance, claim to be acquitted, when the other facts necessary to constitute the crime of larceny appear upon the evidence, seems to be a want of the proper proof that the taking was felonious, or *invito domino*, and not the want of any property in the true owner, who, by losing his goods, does not lose his property in them until seizure by some other person having a right to seize in such cases.

An indictment cannot be sustained for stealing the goods of a person unknown, if it appear that the owner is really known.

Walker's case, Glouc. Sum. Ass. 1812, 3 *Campb.* 264. 2 *East's P. C.* 651. It should be well observed, however, with respect to prosecutions for stealing goods of a person unknown, that an indictment, alleging the goods to be the property of a person unknown, will be improper *if the owner be really known;* and that in such case the prisoner must be discharged of the indictment so framed, and tried upon a new one for stealing the goods of the owner by name. This principle was acted upon in a recent case, where the indictment charged the prisoner as an accessory before the fact to a larceny; and stated, that "*a certain person to the jurors unknown*," committed the larceny; and that the prisoner

procured the said "*person unknown*" to commit it; and it appeared, from the opening of the case by the counsel for the prosecution, that the grand jury had found the bill upon the evidence of the thief, who was about to be called as a witness to establish the guilt of the prisoner. *Le Blanc* J. interposed, and directed an acquittal, saying, that he considered the indictment wrong in stating that the goods were stolen by "*a person unknown;*" and he asked how the person, who was the principal felon, could be alleged to be unknown to the jurors, when they had him before them, and his name was written on the back of the bill. This doctrine has been also holden to apply to the case of a receiver of stolen goods, an indictment against whom should state the name of the principal thief, if it be known. *R.* v. ——, *per Dallas* J. *Worcester Lent Ass.* 1815, *MS.* 2 *Russ.* 1313.

Goods belonging to a parish.

He who steals goods belonging to a parish church may be indicted for stealing the goods of the parishioners. 1 *Haw. c.* 33. § 29. (See *ante*, p. 246.)

Stealing a shroud:

And it hath been adjudged, that he who takes off a shroud from a dead corpse, may be indicted as having stolen it from the executors of, or those who buried the deceased, and not of the deceased himself. 2 *East's P. C.* 652.

Or a corpse.

But though in corpses there can be no property, wherefore to steal a dead corpse is no felony; yet it is a very high misdemeanor. 2 *East's P. C.* 652. *Rex* v. *Lynn*, 2 *T. R.* 733. See Vol. I. tit. Bodies (dead) Stealing.

Ownership under particular acts.

There are some cases where the ownership of goods, and the mode of describing the property in them, have been regulated by the provisions of particular acts of parliament.

43 G. 3. c. 59. Tools, implements.

Amongst others, stat. 43 *G.* 3. *c.* 59. § 3. enacts, "that the right and property of all tools, implements, timber, bricks, stones, gravel, and other materials, purchased, gotten, or had by, or by the order of justices in counties, or the surveyor of county bridges, for the time being, or in any respect belonging to such counties, shall be, and the same are hereby vested in such surveyor for time being; in whom, upon any action or indictment being commenced or prosecuted, such property may be laid."

55 G. 3. c. 137. Property in goods, &c. provided for the use of the poor to be vested in overseers.

Stat. 55 *G.* 3. *c.* 137. § 1. enacts, "*That the property of and in* "*all and singular the goods, chattels, furniture, provisions, clothes,* "*linen, and wearing apparel, tools, utensils, materials, and things* "*whatsoever, had and to be had, bought, procured, or provided for* "*the use of the poor of any parish or parishes, township or town-*"*ships, hamlet or hamlets, place or places, shall be, and the same* "*is hereby vested in the overseers of the poor of such parish or* "*parishes, township or townships, hamlet or hamlets, place or* "*places, for the time being, and their successors in office, for the* "*purposes of this act, who are hereby empowered to bring or cause* "*to be brought, any action or actions, or to prefer or order the pre-*"*ferring of any bill or bills of indictment against any person or* "*persons who shall steal, take, or carry away, or buy or receive any* "*such goods, chattels, provisions,, clothes, linen, furniture, wearing* "*apparel, tools, utensils, materials, or things whatsoever as afore-*"*said, or any part thereof; and in every such action and indict-*"*ment the said goods, chattels, provisions, clothes, linen, wearing* "*apparel, tools, utensils, materials, and things, shall be laid or de-*"*scribed to be the property of the overseers of the poor for the time*

55 G.3. c.137. "*being of such parish or parishes, township or townships, hamlet* "*or hamlets, place or places, without stating or specifying the name* "*or names of all or any of such overseers: Provided always, that* "*nothing herein contained shall extend to repeal any of the provisions contained in any act or acts of parliament, whereby the* "*property of and in any such goods, chattels, furniture, provisions,* "*clothes, linen, wearing apparel, tools, utensils, materials, and* "*things, is or may be vested in any other person or persons jointly* "*with, or independent of the overseers of the poor of any parish* "*or parishes, township or townships, hamlet or hamlets, place or* "*places.*"

Not to repeal provisions in local acts.

Went's case. An indictment for stealing goods, may under 55 G.3. state them to be the goods of the overseers of the poor *for the time being* of this parish of *A*.

Thomas King Went was tried before *Burrough* J. at *Hereford Spring Assizes*, 1818, on an indictment which charged that he on 29th *January*, 58 *G*. 3. with force and arms at the parish of *Kington* in the said county, six pounds weight of pork of the value of 4*s*., (and other goods, specifying the goods and value) of the goods and chattels and property of the overseers of the poor for the time being, of the parish of *Kington* aforesaid, then and there being found, feloniously did steal, take, and carry away against the peace, &c. The prisoner at the time the felony was committed was governor of the workhouse of the parish of *Kington*. And it was proved by witnesses, and by the confession of the prisoner, that he had committed a felony by stealing goods which were the property of the overseers at the time the felony was committed. But on attending to the form of the indictment, a doubt arose whether it was not uncertain, inasmuch as it alleges that the stolen goods were the goods, chattels, and property of the overseers of the poor of the parish of *Kington* for the time being, and not that they were so at the time of the felonious stealing, taking, and carrying away the same. The jury found the prisoner guilty of the felony, and upon reference to the judges they thought that the indictment sufficiently imported that the goods were at the time of the theft the property of the then overseers. Conviction right. *Rex* v. *Went, Hereford Sp. Ass.* 1818. *MS. C. C. R. And see per Burrough* J. *in Addey* v. *Woolley*, 3 *Moore, C. P.* 22.

56 G.3. c.73. By stat. 56 G.3. c. 73. "*For removing difficulties in the conviction* "*of offenders stealing property from mines,*" it is enacted, "*that it* "*shall be lawful and shall be deemed sufficient to all intents and purposes whatsoever, for the conviction of any offender or offenders* "*charged in any indictment with grand or petty larceny for or on* "*account of stealing any minerals or any timber, iron, or other* "*materials used in or for the working of mines, being the personal* "*property of any company or adventurers carrying on the same,* "*to allege and aver that the minerals, timber, iron, or other* "*materials so stolen, are the property of some one or more of the* "*partners or adventurers in such mining concern, and others his* "*or their partners or co-adventurers, without naming such other* "*partners or co-adventurers; and that such form of describing the* "*property stolen from such company or adventurers shall be to all* "*intents and purposes whatsoever, as valid and effectual in law as* "*if the same were averred to be the property of all the owners* "*thereof, and as if the names of all such owners were particularly* "*and distinctly set forth in such indictment.*"

Minerals and timber and other materials used for working mines, may be laid as the property of one or more of the partners or adventurers in the mining concern.

1 G.4. c.102. And by stat. 1 *Geo*. 4. *c*. 102. after reciting stat. 56 *Geo*. 3. *c*. 73. and that the said enactment has been found to facilitate the con-

viction of offenders, and to promote the due administration of justice, without depriving persons accused of any fair means of defence; it is enacted, "that the provisions of the said act with respect to offenders charged as in the said act is mentioned, shall be deemed and taken to extend to all cases of offenders charged in any indictment with burglary, felony, grand or petty larceny, or criminal breach of trust, committed on the goods, chattels or personal property, of what nature soever, of any partners whatsoever, in as ample a manner as if they had been particularly specified in the said act." *Ante*, p. 209. 1 G. 4. c. 102. Extending provisions of recited act, to burglaries, &c.

Above the value of 12*d*.] The learned editor of *Hale*'s History of the Pleas of the Crown, vol. i. p. 12. *note* (*f*), observes that in former times, though the punishment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ransom; but in the 9 *H*. 1. it was enacted, that whoever was convicted of theft should be hanged, and the liberty of redemption was entirely taken away; which law continues to this day. But considering the alteration in the value of money, the severity of it is much greater now than it was then; for the 12*d*. would then purchase as much as 40*s*. will now: And yet a theft above the value of 12*d*. is still liable to the same punishment. Upon which Sir *H. Spelman* justly observes, that while all things else have risen in their value, and grown dearer, the life of man is become much cheaper; and from hence takes occasion to wish that the ancient tenderness of life were again restored. Value of the goods stolen.

And Lord *Coke*, 2 *Inst*. 189. 190., observing that when stat. 3 *Ed*. 1. *c*. 15. divided larceny into grand and petit, the ounce of silver was of the value of 20*d*. and now it is of the value of 5*s*. and above, draws this conclusion, that the thing stolen ought to be reasonably valued, that is, having respect to the great alteration in the value of money. For 20*s*. were then a real *pound* weight; which name we still retain, although the weight is much diminished. How the value should be estimated.

If two persons or more, together, steal goods above the value of 12*d*. every one of them is guilty of grand larceny; for each person is as much an offender as if he had been alone. 1 *Haw*. *c*. 33. § 32. Two persons stealing together.

Also it seems the current opinion of all the old books, that if one at several times steal several parcels of goods, each under the value of 12*d*. but amounting in the whole to more, from the same person, and be found guilty thereof on the same indictment, he shall have judgment of death as for grand larceny; but this severity is seldom practised. 1 *Haw*. *c*. 33. § 33. 2 *East's P. C.* 740. Indeed at this day this doctrine seems to be more than doubtful: for, observes Mr. *East*, as no number of grand larcenies, being distinct acts, which, when added together, would make such a sum as amounts to a capital felony if taken at one time, under certain circumstances of aggravation, if taken at several times, will, under the same circumstances, deprive the party of clergy; so no number of distinct petit larcenies amount to grand larceny. And so it was holden in *Petrie*'s case, *O. B. Jan*. 1784. 1 *Leach*, 294. on an indictment on the stat. 12 *Ann*. *c*. 7. for stealing to the amount of 40*s*. in a dwelling-house. The prisoner was servant to the prosecutor, and had at different times purloined his master's Stealing at several times. R. v. Petrie.

Stealing at several times.

property to a very considerable amount: but it did not appear that he had ever taken to the amount of 40*s.* at any one time: on this ground he was acquitted of the capital part of the charge by the direction of the Court. And the same point was ruled by *Ashhurst* J. in a subsequent case. *R.* v. *Farley, Surrey Lent Ass.* 1786.

§ II. Of Petit Larceny.

What it is.

Petit larceny agrees with grand larceny in the several particulars above mentioned, except only the value of the goods (and except as hereafter followeth); so that wherever an offence would amount to grand larceny, if the thing stolen were above the value of 12*d.* it is petit larceny if it be but of that value or under. 1 *Haw.* *c.* 33. § 34.

And if one be indicted for stealing goods to the value of 10*s.* and the jury find specially, as they may, that he is guilty, but that the goods are worth but 10*d.*; he shall not have judgment of death; but only as for petit larceny. 1 *Haw. c.* 33. § 35.

Can be no accessaries.

In petit larceny there can be no accessaries neither before nor after. 1 *Hale,* 530.* And see *Powell* J.'s observation in *Rex* v. *Reddeard,* 2 *East's P. C.* 743. *notis.*

3 Ed. 1. c. 15. How far bailable.

By stat. 3 *Ed. 1. c.* 15. Persons indicted of petit larceny, *if they were not guilty of some other larceny aforetime,* are bailable by justices of the peace. And it seems to be agreed that there is no necessity that such person be of good reputation: But yet if the crime be open and manifest, it seems that they ought not to be bailed; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the statute to bail them. 2 *Haw. c.* 15. § 50.

Justices to commit or bail.

For a justice of the peace, before whom an offender shall be brought for petit larceny out of sessions, may not punish the said offender by his discretion, and so let him go, but must have him committed or bailed, to the intent he may come to his trial, as in cases of other felonies; and if upon his trial, the jury shall find the goods stolen to exceed 12*d.* in value, the offender shall have judgment to die for the fault. *Dalt. c.* 154.

§ III. Punishments of Grand and Petit Larceny.

Grand larceny.

At common law the judgment for *grand larceny* is death; but the party may pray the benefit of clergy, unless in cases where he is ousted by particular statutes; and he shall also lose his goods. 2 *East's P. C.* 736, 737.

Petit larceny.

In petit larceny.] The offender was only subject to whipping, or other corporal punishment less than death, by which is now understood imprisonment; and in this case also the party loses his goods on conviction. 2 *East's P. C.* 737.

Grand larceny may now be punished by fine or whipping and imprisonment, or by transportation; and petit larceny by whipping and imprisonment, or by transportation; as appears by the result of the common law punishments, and the following statutable provisions. 2 *Russ.* 1158.

Stat. 18 *Eliz.* *c.* 7, § 3. provides that persons to whom clergy is allowed, may, for their further correction, be imprisoned for any time not exceeding a year, in the discretion of the justices before whom such allowance is had. 18 Eliz. c. 7. Imprisonment not exceeding a year.

Stat. 5 *Ann.* *c.* 6. § 2. (which provided that benefit of clergy should he granted to all who were entitled to ask it, without requiring them to read by way of conditional merit,) enacts, that where any person is convicted of any theft or larceny, and burnt in the hand for the same, according to the ancient law, "the judge or justices before whom such offeuder or offenders shall be tried and convicted, shall also at his or their discretion award and give judgment that such offender, &c. shall be committed to some house of correction or public work-house within the county, city, &c. where such conviction shall be, there to remain for any time not less than six months nor exceeding two years, to be accounted from such conviction; and such offenders shall be there kept at hard labour during such time as shall be so adjudged and recorded;" and in case of refusal or neglect to labour as they ought, the master or keeper of such house, &c, is required to give them due correction. By § 3. in case of escape a method is pointed out of inflicting further punishment on the delinquent. 5 Ann. c. 6. Commitment to the house of correction, &c. for not less than six months, nor more than two years.

Under this statute the judge has a discretion whether he will imprison at all or not. *Ex parte Brownsell*, *B. R. Tr.* 18 *G.* 3. 2 *MS. Sum.* 257. 5 *East's P. C.* 738.

By stat. 4 *G.* 1. *c.* 11. "Where any person or persons shall be "convicted of grand or petit larceny, or any felonious stealing or "taking of money or goods and chattels, either from the person "or the house of any other, or in any other manner, and who by "law shall be entitled to the benefit of clergy, and liable only to "the penalties of burning in the hand or whipping (except per- "sons convicted for receiving or buying stolen goods, knowing "them to be stolen), it shall and may be lawful for the court be- "fore whom they were convicted, or any court holden at the same "place or (holden at any other place for the same county, &c. by "stat. 6 *G.* 1. *c.* 23. § 1. with the like authority), if they think fit, "instead of ordering such offenders to be burned in the hand or "whipped, to order that such offenders shall be sent to some of "H. M.'s colonies and plantations in *America*, for the space of "seven years." And the same courts shall have power to make over such offenders by order of the court to the use of any person who shall contract for their transportation. 4 G. 1. c. 11. Transportation

And now by stat. 5 *G.* 4. *c.* 84. § 2. every person convicted before any court of competent jurisdiction in *G. B.* of an offence for which he or she shall be liable to be transported or banished, shall be adjudged to be transported *beyond the seas* for the term of life or years for which such offender shall be liable by any law to be transported, and every sentence and order for transportation made in pursuance of the sentence of any such court or other competent authority, shall subject the offender to be conveyed beyond the seas under the provisions of this act. See § 13. 17. Vol. V. *tit.* Transportation. 5 G. 4. c. 84. Sentence of transportation

By stat. 4 *G.* 1. *c.* 11. § 3. "When any person shall, in any of "the courts before mentioned (*a*), be lawfully convicted of any

(*a*) i. e. "At any sessions of oyer and terminer, or gaol delivery, or at any quarter or general sessions of the peace, &c. within *England*, or at any great session for the county palatine of *Chester*, or within the principality of *Wales*." Fine in lieu o burning:

"felony within the benefit of clergy, for which the party is "liable to be burned in the hand, it shall and may be lawful for "the court before whom any person shall be so convicted, or any "court holden for the same place with the like authority, if they "think fit, instead of such burning to impose upon such offender, "a moderate pecuniary fine: or otherwise it shall be lawful, instead "of such burning (except in case of manslaughter) to order and "adjudge the offender to be whipped publicly or privately, once "or oftener, but not exceeding three times; such private whipping "to be in the presence of not less than two persons besides the offender and officer who inflicts it; and in case of females, in the "presence of females only;" (*a*) and such fine or whipping shall have the same legal effect as burning. And by § 4. nothing in this act shall be taken to abridge the power of the court to imprison (as before) if it thinks fit.

or whipping in lieu of burning, except in manslaughter.

53 G.3. c.162. Punishment in cases of felony, grand and petit larceny.

Stat 53 *G.* 3. *c.* 162. (after repealing stat. 52 *G.*3. *c.* 44. § 57.) enacts that, "it shall and may be lawful for any court to pass "upon any person, who shall be lawfully convicted before any "such court of felony with benefit of clergy, or of any grand larceny or of any petit larceny, the sentence of imprisonment to hard "labour, either simply and alone, or in addition to any other sentence which such court may or shall be authorised by law to pass "upon any person lawfully convicted of any of the offences aforesaid, as to such court shall seem fit; and such person shall thereupon suffer such other sentence, and be moreover imprisoned "and kept to hard labour, or be simply imprisoned and kept to "hard labour, in such place and for such time as such court shall "think fit to direct, not exceeding the time for which such court "may now imprison for such offences."

31 G.3. c.35.

By stat. 31 *G.* 3. *c.* 35. No person shall be an incompetent witness by reason of a conviction for petit larceny.

3 G.4. c.38. Punishment of servants, &c. robbing their employers.

By stat. 3 *G.* 4. *c.* 38. § 2. After reciting that *whereas frequent depredations have of late been committed by clerks, apprentices, and servants, to the serious detriment and loss of their masters, mistresses, or employers; and it is expedient that such offenders, when entitled to benefit of clergy, should be made liable to a more severe punishment than can now by law be inflicted:* it is therefore enacted, "that from and after the passing of this act, (24th *June* 1822,) if any clerk, apprentice, or servant whatsoever, shall feloniously steal any goods, chattels, money, bond, bank note, cheque upon a banker or bankers, draft, promissory note for the payment of money, bill of exchange, or other valuable security or effects, from or belonging to, or in the possession, custody, or power of his, her, or their master or masters, mistress or mistresses, or employer or employers, and shall be lawfully convicted thereof, and be entitled to the benefit of clergy, then and in every such case, such offender or offenders instead of being subjected to such punishment as may now by law be inflicted upon persons so convicted, and entitled to the benefit of clergy, may, at the discretion of the court by or before which he, she, or they shall be convicted, be ordered and adjudged to be transported beyond the seas for any term not exceeding fourteen years, or to be imprisoned only, or to be imprisoned or kept to hard labour, in the common gaol, house

(*a*) Punishment of females by whipping, abolished by stat. 1 G 4. c. 57. See Vol. V. *tit.* Woman.

of correction, or penitentiary house, for any term not exceeding three years."

§ IV. Larceny from the Person.

If the goods be taken from a man's person, the offence receives a farther degree of guilt: and if it be attended with putting him in fear, it is called *robbery;* for which see that title, Vol. V.

If it be without putting him in fear, then it is called barely *larceny from the person.* 1 *Haw. c.* 34. § 2.

8 Eliz. c. 4.

The offence of stealing from the person, when committed privily, and without the knowledge of the party, was made subject to capital punishment, by stat. 8 *Eliz. c.* 4. which after reciting the impudent boldness of cut-purses, or pick-purses, enacted that no person, indicted for the felonious taking of any money, goods, or chattels, from the person of any other, privily, without his knowledge, and found guilty, should be admitted to the benefit of clergy. But by stat. 48 *G.* 3. *c.* 129., it is enacted, "*that every person who shall at any time or in any place whatever, feloniously steal, take, and carry away any money, goods, or chattels from the person of any other, whether privily without his knowledge or not, but without such force or putting in fear, as is sufficient to constitute the crime of robbery, or who shall be present aiding and abetting therein, shall be liable to be transported beyond the seas for life, or for such term not less than seven years, as the judge or court, before whom any such person shall be convicted, shall adjudge, or shall be liable in case the said judge or court shall think fit, to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not exceeding three years.*"

Repealed by stat. 48 G. 3. c. 129. (*Sir Samuel Romilly's act.*) Persons feloniously stealing from the person of another whether privily or not, &c. liable to be transported, &c

Rex v. Pearce.

R. v. *Pearce, O. B. April Sess.* 1810. *Cor.* Ld. *Ellenborough* C. J.. *MS. C. C. R.* 2 *Russ.* 1174. *Joseph Pearce* was tried at the *O. B. April Sess.* 1810, before Ld. *Ellenborough* C. J. upon an indictment founded on stat. 48 *G.* 3. *c.* 129., for stealing the pocket-book, &c. belonging to one *Charles Thompson* from his person. Upon the evidence it appeared that the things were taken from the person of *Thompson* by the prisoner and three accomplices, under such circumstances of force as were sufficient to constitute the crime of robbery in them all, and the question reserved was, whether the offence thus charged and proved was not expressly excepted out of the provision of the act, and therefore only punishable as a common larceny, the description in the indictment not applying to the case of a robbery. At the *O. B. June Sess.* 1810, *Grose* J. in delivering the opinion of the judges, said, it clearly appears, in this case, that there was a felonious taking from the person of the prosecutor, but that the taking was without that degree of force, violence, and intimidation, which is necessary to constitute the crime of robbery at common law. The offence, therefore, can only be punished as a common larceny. But the noble lord who tried the prisoner referred the consideration of the case to the judges on a question, raised by the prisoner's counsel, whether, as it was uncertain whether the property was taken by the prisoner himself, or by one of his accomplices, he could under the terms and meaning of stat. 48 *G.* 3. *c.* 129. § 2. be legally convict-

Rex v. Pearce. ed. Looking at this charge as it is laid in the indictment, and observing at the same time the words of the statute, it is clear that the legislature did not mean to alter the law respecting robbery. The intention was only to alter the species of larceny created by 8 *Eliz. c.* 4. from a capital punishment to transportation. The 8 *Eliz. c.* 4. was confined to the person who actually committed the fact, and did not extend to accessaries, or to those who were present, aiding and abetting the perpetration of the offence (*a*), but the 48 *G.* 3. *c.* 129. makes the principals in both degrees equally culpable. The judges, therefore, are unanimously of opinion, that the offence is properly charged as a taking from the person without force, that the prisoner is properly convicted; and that he may be punished by transportation according to the direction of the statute.

R. v. Robinson and Perry. *Charles Robinson* and *William Perry* were indicted at *Lancaster Sum. Ass.* 1816, before *Wood* B., for feloniously stealing from the person of *James Castelow* one bank note for 1*l.*, one hat of the value of 5*s.* and five sixpences his property against the form of the statute and against the peace. Upon the trial the case clearly appeared to be that of highway robbery by knocking the prosecutor down in the public street at *Manchester* at night, rifling his pockets, and stealing the property mentioned in the indictment from his person. The prisoners were convicted and sentenced to transportation for life, but the following questions were submitted to the judges: 1st. Whether the indictment was good as it did not aver or allege that the stealing from the person was without such force or putting in fear as was sufficient to constitute the crime of robbery, being an indictment on the statute, and the above-mentioned exception being in the enacting part of the statute and not by way of separate proviso. If the indictment was not good, whether judgment ought not to have been arrested though no such motion was made. Secondly, whether, if the indictment were not good on the statute, it were a good indictment as for simple larceny; and if so, whether the sentence of transportation ought to have been for life, or for seven years only, as for simple larceny. The judges held the conviction right, and the prisoners were transported according to their sentence. *MS. C. C. R.*

§ V. Larceny from the House.

Larceny from the house is not distinguished at common law from simple larceny, unless where it is accompanied with the circumstance of breaking the house at night, when it falls under another description, that of burglary.

But now, by various acts of parliament, the benefit of clergy is taken away from larcenies committed in a house in almost every instance. And though the multiplicity of those provisions is apt to create some confusion, yet, upon comparing them, we may collect that the benefit of clergy is denied upon the following domestic aggravations of larceny, viz.

(*a*) See *R.* v. *Baynes*, 1 *Leach*, 7. *R.* v. *Sterne*, 1 *Leach*, 473. *R.* v. *Murphy*, 1 *Leach*, 266.

First—In Larcenies above the Value of 12*d.* committed,

1. In a church or chapel, with or without violence or breaking the same. 23 *H.* 8. *c.* 1. § 3. 1 *Ed.* 6. *c.* 12. § 10.
2. In a booth or tent, in a fair or market, in the day or night, by violence or breaking the same, the owner or some of his family being therein; though they need not be put in fear. 5 & 6 *Ed.* 6. *c.* 9. § 5.
3. By robbing a dwelling-house in the day-time, (which robbing implies a breaking,) any person being therein, though not put in fear. 3 & 4 *W.* & *M.* *c.* 9.
4. In a dwelling-house, by day or night, without breaking the same, any person being therein and put in fear; which amounts in law to a robbery (*a*): and in both these last instances accessaries before the fact are excluded clergy. 3 & 4 *W.* & *M.* *c.* 9.

Secondly—In Larcenies to the Value of 5*s.* committed,

1. By breaking any dwelling-house, or any out-house, shop, or warehouse, thereto belonging, in the day-time; though no person be therein: which extends to aiders, abettors, and accessaries before the fact. 39 *Eliz.* *c.* 15. 3 & 4 *W.* & *M.* *c.* 9.
2. By privately stealing goods, wares, or merchandises in any shop, warehouse, coach-house, or stable, by day or night; though the same be not broken open; and though no person be therein; which extends likewise to such as assist, hire, or command the offence to be committed. 10 & 11 *W.* 3. *c.* 23. and see stat. 1 *G.* 4. *c.* 117. § 1. *post*, p. 263.

Thirdly—In Larcenies to the Value of 40*s.*

In a dwelling-house or its out-houses, though not broken open, and whether any person be therein or not; unless committed by apprentices under the age of fifteen, against their masters: This also extends to aiders and assisters. 12 *Ann.* st. 1. *c.* 7.

By stat. 23 *H.* 8. *c.* 1. § 3. "No person who shall be found "guilty after the laws of this land, for robbing any churches, "chapels, or other holy places; or for robbing of any person or "persons in their dwelling-houses, or dwelling-places; the owner "or dweller in the same house, his wife, his children, or servants, "then being within, and put in fear and dread by the same; or "for robbing of any person or persons in or near about the high-"ways: nor any person or persons being found guilty of any "abetment, procurement, helping, maintaining, or counselling of "or to any such felonies, shall be admitted to his clergy." 23 H. 8. c. 1. No person robbing any church, &c. shall be admitted to clergy

By stat. 1 *Ed.* 6. *c.* 12. § 10. "No person who shall be in due "form of law attainted or convicted of breaking of any house by "day or by night; any person being then in the same house, 1 Ed. 6. c. 12. Breaking a house in the

(*a*) If the property be taken by violence or terror in the presence of the party, which alone amounts to *robbery*, properly so called, the value is immaterial. *Vide* 2 *East's P. C.* 633.

1 Ed.6. c.12.

day-time, any person being therein, and put in fear.

" where the same breaking shall be committed, and thereby " put in fear or dread: or of robbing any person in or near the " highway; or of feloniously taking of any goods out of any " parish church or chapel; or being indicted or appealed of any " of the same offences, and thereupon found guilty by verdict, " or shall confess the same upon his arraignment, or will not an- " swer directly, or shall stand mute, shall (not) be admitted to " the benefit of his clergy."

The "*breaking*" mentioned in this statute, must be an actual breaking; such as, if done in the night, would have amounted to burglary. 2 *East's P. C.* 631.

5 & 6 Ed.6. c.9.

The stat. 5 & 6 *Edw.* 6. *c.* 9. § 4. after reciting a former act of 23 *Hen.* 8. *c.* 1. concerning robbing persons in their dwelling-houses, and some doubts which had arisen upon its construction, " enacts and ordains, and establishes, that if any person or per- " sons be found guilty of robbing of any person or persons in any " part or parcel of their dwelling-houses or dwelling-places, the " owner or dweller in the same house, or his wife, his children, " or servants, being then within the same house or place, where " it shall happen the same robbery and felony shall be committed " and done, or in any other place within the precinct of the same " house or dwelling-place; that such offenders shall not be ad- " mitted to their clergy; whether the owner or dweller in the " same house, his wife, or children, then and there being, shall " be waking or sleeping."

Construction of stat. 5 & 6 Ed. 6. c. 9.

Upon this statute the construction has been, that though the statute does not mention *a breaking*, yet an actual breaking, such as would make a burglary, if committed in the night, is necessary; and the reason given is, that the statute speaking of *robbing* imports more than a bare taking of goods, &c., and implies some actual violence. *An intent* to rob is not sufficient; there must be an actual felonious taking away of some property. And it is said, that the value of the property stolen must be above twelve-pence; on the ground that the statute did not alter the nature of the offence; but only took away clergy where clergy was allowed before, namely, where the offence was capital, as in grand larceny. It is not enough that a stranger or sojourner, be in the house at the time of the robbery, either the owner, or his wife, children, servants, or servant (according to the words of the statute) must be within the precinct of the house at the time, but it is not necessary that they should be in the same room where the robbery is committed. 2 *East's P. C.* 636. 2 *Russ.* 967, 968., and the authorities there cited.

39 Eliz. c.15. Robbing an house, &c. in the day-time, to the value of 5s., no person being therein.

The stat. 39 *Eliz. c.* 15. § 1. reciting, " that then of late divers " felonious persons understanding that the robbing of houses in " the day-time, no person being therein at the time, is not so " penal as where some person is therein, had been emboldened " to take their opportunity to commit many heinous robberies in " breaking and entering divers houses, especially of the poorer " sort, who were not able to keep any servant, or otherwise to " leave any person to look to their house when they go to hear " divine service, or from home to follow their labour," &c., enacts (§ 2.) " that if any person or persons shall be found guilty and " convicted by verdict, confession or otherwise, according to " law, for the felonious taking away in the day-time of any

"money, goods, or chattels, being of the value of 5*s.* or upwards, in any dwelling-house or houses, or any part thereof, or any outhouse or outhouses, belonging to and used with any dwelling-house or houses; although no person shall be in the said house or outhouses at the time of such felony committed; then such person shall not be admitted to clergy." 39 El. c. 15.

Stat. 3 & 4 *W.* & *M.* *c.* 9. § 2. enacts "that if any person or persons whatsoever be indicted of any offence, for which by virtue of any former statute he or they are excluded clergy, if he or they had been thereof convicted by verdict or confession; if he or they stand mute, or will not answer directly to the felony, or challenge peremptorily above twenty, &c., or shall be outlawed thereupon, shall not be admitted to the benefit of clergy." 3 & 4 W. & M c. 9.

The same statute, § 1. enacts "that all and every person or persons who shall rob any other person: or shall feloniously take away any goods or chattels, being in any dwelling-house, the owner or any other person being therein and put in fear: or shall rob any dwelling-house in the day-time, any person being therein; or shall comfort, aid, abet, assist, counsel, hire, or command, any person or persons to commit any of the said offences; or to break any dwelling-house, shop, or warehouse, thereunto belonging, or therewith used, in the day-time, and feloniously take away any money, goods, or chattel, of the value of 5*s.* or upwards, therein being; although no person shall be within such dwelling-house, shop, or warehouse; being thereof convicted or attainted, or being indicted thereof, shall stand mute, or will not directly answer to the indictment, or shall peremptorily challenge above twenty, shall not have the benefit of clergy." Robbing a dwelling-house, some person being therein.

By stat. 10 & 11 *W.* 3. *c.* 23. § 1. All and every person and persons that shall at any time or times, by night or in the day-time, from and after the 20th day of *May* in the year 1699, in any shop, warehouse, coach-house, or stable, privately and feloniously steal any goods, wares, or merchandises, being of the value of five shillings or more, although such shop, warehouse, coach-house, or stable be not actually broke open by such offender or offenders, and although the owners of such goods, or any other person or persons be or be not in such shop, warehouse, coach-house, or stable to be put in fear, or shall assist, hire or command any person or persons to commit such offence, being thereof convicted or attainted by verdict or confession, or being indicted thereof shall stand mute, or will not directly answer to the indictment, or shall peremptorily challenge above the number of 23 persons returned to be of the jury, shall be absolutely debarred and excluded of and from the benefit of clergy. But now by stat. 1 *G.* 4. *c.* 117. § 1., after reciting stat. 10 & 11 *W.* 3. *c.* 23. § 1.; and whereas the said act has not been found effectual for the prevention of the crimes therein mentioned; and it is therefore expedient that so much of the said act as is herein-before recited should be repealed: and whereas it might tend more effectually to prevent the crime of larceny in shops, warehouses, coach-houses, and stables, if every such offence were punishable more severely than simple larceny: Enacts, that so much of the said act as is herein-before recited shall, from and after the passing of this act, be and the 10 & 11 W. 3 c. 23. Shoplifting to the value of 5s 1 G. 4. c. 117. So much of recited act as takes away the benefit of clergy from persons privately stealing in any shop &c. goods of the value of 5s. repealed.

1 G.4. c.117.

same is hereby repealed, as to privately and feloniously stealing any goods, wares, or merchandises under the value of 15*l.*

4 G.4. c.53. So much of 10 & 11 W.3. c.23. § 1. (altered by 1 G.4. c.117.) as takes away benefit of clergy from persons privately stealing in any shop, &c. goods of the value of 15*l.*: repealed.

Stat. 4 *G.*4. *c.* 53. reciting, Whereas by stat. 10 & 11 *W.* 3. *c.* 23. § 1. as the same is altered by stat. 1 *G.* 4. *c.* 117. the benefit of clergy is taken away from persons convicted of privately and feloniously stealing any goods, wares, or merchandise of the value of 15*l.* in any shop, warehouse, coach-house, or stable, or of assisting, hiring, or commanding any person to commit any such offence, so much of the said recited acts as takes away the benefit of clergy from the persons convicted of the offences hereinbefore mentioned shall be repealed.

Persons privately stealing goods of the value of 5s. and under 15*l.* liable to be transported, &c.

By stat. 1 *G.*4. *c.*117. § 2. Every person who shall privately and feloniously steal any goods, wares, or merchandises, of the value of 5*s.* or more, being under the value of 15*l.* in any shop, warehouse, coach-house, or stable, or who shall aid or assist any person to commit such offence, shall be liable to be transported beyond the seas for life, or for such term, not less than seven years, as the court before which any such person shall be convicted shall adjudge; or shall be liable, in case the said court shall think fit, to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not exceeding seven years. (*a*)

12 Ann. st. 1. c.7. Stealing out of an house to the value of 40s. no person being therein; and the same not broken open.

Stat. 12 *Ann. st.* 1. *c.* 7. reciting, that "forasmuch as divers "wicked and ill-disposed servants and other persons are en-"couraged to commit robberies in houses by the privilege of "clergy," &c. enacts "that every person who shall feloniously "steal any money, goods, or chattels, wares or merchandises, of "the value of 40*s.* or more, being in a dwelling-house, or out-"house thereunto belonging; although such house or outhouse "be not actually broken by such offender; and although the "owner of such goods, or any other person or persons, be or be "not in such house or outhouse; or shall assist or aid any person "or persons to commit any such offence; being thereof convicted "or attainted by verdict or confession, or being indicted thereof "shall stand mute, or will not directly answer to the indictment, "or shall peremptorily challenge above twenty, &c., shall be de-"barred of clergy." With a proviso, (§ 2.) "that the act shall "not extend to apprentices under the age of fifteen years, who "shall rob their masters as aforesaid."

Bank notes within 12 Ann. st. 1. c. 7.

The stealing of bank notes is within this act. This was ruled by all the judges in *Dean's* case, in *Easter* term 1796. 2 *East's P. C.* 646. 2 *Leach*, 693.

A lodger, who invites a man to his room, and there steals his goods to the value of 40s. when not about his person, is

Rex v. *John Taylor*, *MS. C. C. R. E. T.* 1820. The prisoner was convicted before *Park* J. at ———— *Lent Ass.*, 1820, of stealing a watch in the dwelling-house of *John Wakefield*. The prisoner lodged in the house of *John Wakefield*, and the prosecutor, who was an old acquaintance of the prisoner, and who could not get a bed in the public-house where they met, consented to accept part of his bed. They went home together, and neither *John Wakefield* nor any

(*a*) Thus privately stealing in any shop, warehouse, coach-house, or stable, above or to the value of 12*d.*, and under the value of 5*s.*, seems to remain as at common law, a capital offence, within the benefit of clergy. So that if a person having previously had his clergy, should be convicted of such an offence, judgment of death must be recorded against him; whereas if the same person was convicted of a like larceny amounting to 5*s* and under 15*l.* value, he would at most be only liable to transportation for life. See *Tyrw.* & *Tyn. Digest of the Statutes*, p. ix. x. *notis.*

of his family knew of the prosecutor being there, so that he was the guest of the prisoner, who stole his watch from his bed's head. It having been held, that the stat. 12 *Ann.* *c.* 7. does not extend to a man stealing *in his own house*, his Lordship doubted whether the prisoner was not to be considered as the owner with respect to the prosecutor; and as the statute was made for the protection of property deposited in the house, and not on the person of the party, and the prosecutor was neither the occupier nor a settled inhabitant of the house in which the watch was taken, judgment was respited, and, on case, seven judges, out of nine assembled, held the conviction right.

R. v. Taylor.

liable to be found guilty of stealing in a dwelling-house The goods of a lodger's guest are under the protection of the dwelling-house.

See *Rex* v. *Thompson and Macdaniel*, 1 *Leach*, 338. 2 *East's P. C.* 644.

Howard's case

Warehouse.] *John Howard* was indicted on stat. 10 & 11 *W.*3. *c.*23. for privately stealing goods the property of Messrs. *Fludyer* & *Co.* in the warehouse of *J. Day*. Another count charged the prisoner with stealing the goods of *J. D.* in his warehouse. It appeared that *Day* kept a common warehouse by the water-side, where merchants usually lodged goods intended for exportation, until they could ship them. These goods were sent by *F.* & *Co.* to this warehouse for that purpose, from whence they were stolen by the prisoner. The Court held that the case was not within the statute; for by the word *warehouse* is meant, not a mere repository for goods, but such places where merchants and other traders keep their goods for sale, in the nature of shops, and whither customers go to view them; and though the goods in this case might properly be charged to be the property of *Day*, since he had the charge and possession of them, which made him accountable to his principals for them; yet his warehouse was not a place for sale, but merely safe custody. Accordingly, the larceny being fully proved, the prisoner was found guilty of simple larceny only, and acquitted of stealing privately in the warehouse. *Howard's case*, *O. B.* 1751. *Fost.* 77. 2 *East's P. C.* 642.

It has been generally holden, that the meaning of this act, with regard to *shoplifting*, is, that the goods must be such as are usually exposed to sale in the *shop*, and not any other valuable thing which may happen to be put there: and it seemeth that the same equitable construction should take place with regard to *warehouses*. The goods should be such as are usually exposed to sale in such places; and though *coach-houses* and *stables*, which are likewise named in the act, are not places for sale, yet still in the construction of so penal a law, it will not be amiss to carry the same equity as far as may be with regard to them. The goods should be such as are usually lodged in those places. *Fost.* 77.

Sea's case.

And therefore in *J. Sea's* case, the court doubted whether a livery great coat belonging to a coachman, which he had hung up in the stables, whilst he went into the house to receive his wages, could be considered as any part of the proper or usual furniture of the stable out of which it was stolen; and therefore directed the prisoner to be acquitted of the capital part of the charge. *Sea's case*, *O. B.* 1785. 1 *Leach*, 304.

Privately.] If it shall appear on the evidence, as it often doth, that those places were *broke open* at the time of the larceny, the case (as it seemeth) will not come within the act. For the words are,—if any person shall *privately* steal,—which seemeth to ex-

clude all cases, where any degree of force is used to come at the goods. *Fost.* 79.

The same point was also ruled in *Rex* v. *Tims & Cecil, O. B.* 1711; in *Rex* v. *Cartwright, O. B.* 1726; and in *T. Jones*'s case by all the judges, in *Easter Term* 1797, 2 *East's P. C.* 641.

Money not included.

Any goods, wares, or merchandise.] In which words *money* is not included. For although the word *goods* may in a large sense take in money, and often doth, yet being connected with *wares and merchandises,* the safer construction of so penal a statute will be to confine it to goods of like kind, goods exposed to sale. *Fost.* 79.

But stat. 12 *Ann.* st. 1. *c.* 7. extends expressly to money feloniously taken in a dwelling-house or out-house thereunto belonging, where the sum amounts to 40*s.* 2 *East's P. C.* 343.

Horses.

Horses seem to be included under the general word "goods", &c. by reason of the mention of coach-houses and stables; and horse-stealers are specified in the subsequent parts of the act.

Although the owner of such goods, &c.] If the goods of a stranger be stolen, it is not within this act; for this law was intended as a security for shopkeepers and traders in the better protection of their goods. And therefore a shirt left in a mercer's shop to be sent to wash, was holden not to be within the act. 2 *East's P. C.* 642.

Stone's case.

So in *Stone*'s case: the prisoner was indicted for privately stealing a watch, the property of Sir *R. Hesketh,* in the shop of one *Alcock,* a watchmaker, where it was sent to be repaired, and was hanging up in the show-glass in the shop when it was taken: as the watch was not there for sale, the prisoner could not be convicted under the statute. *O.B.* 1784. 1 *Leach,* 334.

§ VI. Larceny and Embezzlement from Lodgings.

It was long doubted whether, as a lodger had a special property in the goods which were let with his lodgings, the stealing of them was felony: and it was at length decided by a majority of the judges that it is not. *Raven's case, Kel.* 24. *Meere's case, Show.* 50.

3 W. & M. c. 9. Stealing goods from lodgings, felony.

In consequence of this decision, by stat. 3 *W. & M. c.* 9. § 5., after reciting, that it was a frequent practice "for idle and disorderly persons to hire lodgings with an intent to have an opportunity to take away, embezzle, or purloin the goods and furniture being in such lodgings," it is enacted and declared, "that if any person or persons shall take away, with an intent to steal, embezzle, or purloin, any chattel, bedding, or furniture, which by contract or agreement he or they are to use, or shall be let to him or them to use, in or with such lodging, such taking, embezzling, or purloining shall be, to all intents and purposes, taken, reputed, and adjudged to be larceny and felony, and the offender shall suffer as in case of felony."

Sir *E. H. East* observes, *P. C.* 586., that notwithstanding this is a declaratory as well as enacting law in the terms of it, yet the declaratory part of it must be construed with reference to the preamble, and by which alone it seems to be warranted (*a*); and that

(*a*) Except perhaps where the owner continuing in the house may be said to retain the *possession* of the furniture, and the lodger to have only the *use.*

recites that it was a frequent practice "to hire lodgings *with an* "*intent to have an opportunity to take away, embezzle, or purloin* "*the goods and furniture being in such lodgings.*"

A ready furnished house, the whole of which is let to the party, is not a lodging within the meaning of the statute.

As to what shall be considered a lodging within the act; *Charles Palmer* was indicted for stealing some silver spoons of *J. G.* "in a *lodging-house* of the said *J. G.*, let by him to the prisoner, and to be used by the prisoner with the said *lodging-house.*" The facts appeared to be, that the prisoner had hired the whole house, ready furnished, by the week; and it was particularly agreed that he should make good every thing which was missing or injured. The spoons stolen by him were let with the house. After conviction, sentence was respited upon a doubt whether the case were within the statute, which uses the word *lodging* and not *lodging-house;* and the case, by desire of the prisoner, was argued before all the judges (except *Ashhurst* J.) in the Exchequer-chamber, on the 16th of *June* 1795. On the 25th of the same month all the judges (in the absence of *Grose* J.), agreed, that this was not a case within the act of parliament. *Eyre* C. J. said, it was meant to apply to cases where the owner had a possession, and the lodger the use, and was made to obviate a doubt as to the owner's possession: and *Buller* J. referred to the stat. 30 *G.* 2. *c.* 3., as explanatory of the word lodger, which gives a penalty against *house-holders* for not giving an account of their *lodgers* to the assessors of the land-tax. It was also thought by some, that the agreement to make good what should be missing, took the case out of the statute. (*a*) *Palmer's case, Sussex Lent Ass.* 1795. 2 *East's P. C.* 586. 2 *Leach,* 680.

It is necessary, in an indictment on this statute, to state correctly the contract for the lodgings; and to set forth as well the name of the person *by* whom, as of the person *to* whom they were let. *Pope's case, O. B.* 1784. 1 *Leach,* 386. 2 *East's P. C.* 587.

If lodgings be let to a *married woman,* during co-habitation with her husband, and her husband afterwards assent to the contract, the indictment must state that the lodgings were let to the husband, and will be erroneous if it state that they were let to the wife. *Pike's case,* cor. *Gould* J., *O. B.* 1784. 1 *Haw. c.* 43. § 4.

An indictment for stealing "the goods and chattels being in a certain lodging-room in the dwelling-house of *T. N.* there situate, let by contract by the said *T. N.* to the said defendant, and to be used by the said defendant with the lodging aforesaid," was held sufficient; although it was not stated that the goods were let *at the time* they were stolen. *Burnell's case,* 2 *East's P. C.* 587. 2 *Leach,* 588. 2 *Stark. C. P.* 432.

In larceny the goods of a ready furnished lodging must be described as the lodger's goods. Not the original owner's.

Rex v. *John Belstead, MS. C. C. R.* The prisoner was convicted before *Richardson* J. at the *O. B. Feb. Sess.* 1820, of breaking and entering the dwelling-house of *James Anderson,* in the day-time (the said *James Anderson* and others being therein) and stealing therein certain bed curtains, valences, sheets, pillows, pillow-cases, pictures, and looking-glasses, the property of the said *James Anderson.* The breaking and stealing were clearly proved; but it appeared that *James Anderson* occupied part of the dwell-

(*a*) At the summer assizes for *Sussex,* 1795, Lord C. B. *Macdonald* ordered the prisoner to be discharged, saying "I am sorry that the laws of *England* have not provided for your case, for I have no doubt whatever of your guilt." 2 *Leach,* 692.

ing-house himself, and let out the rest in ready furnished lodgings, and that the property stolen was the furniture of a room let by *Anderson* to one *Thomas Youren*, furnished at half-a-crown a week, and that a week was running at the time of the robbery. *Youren* usually left the key of his room with *Anderson*'s wife to make the bed, &c. and had it from her when he wanted it. The door was opened by the prisoner by means of a false key. The learned judge doubted whether *Anderson* had sufficient possession of this furniture to warrant the laying of the property in him; and on case, the judges held that the goods should have been described as *Youren*'s, for *Anderson* was not entitled to the possession, and could not have maintained trespass, and therefore the conviction was wrong. *Vide* 2 *East's P. C.* 585. *Ward* v. *Macauley*, 4 *T. R.* 489. and *Gordon* v. *Harper*, 7 *T. R.* 9.

§ VII. Larceny in a Booth or Tent.

5 & 6 Ed. 6. c. 9.

Stat. 5 & 6 *Ed.* 6. *c.* 9. § 5. enacts and ordains, "That no person or persons which shall be found guilty of and for robbing "any person or person in any booth or tent in any fair or market, "the owner, his wife, his children, or servants or servant, then "being within the same booth or tent, shall (not) be admitted to "the benefit of clergy, &c. whether the owner or dweller of such "booths or tents, his wife, children, or servants being in the same "at the time of such robberies and felonies committed, shall be "sleeping or waking."

§ VIII. Larceny on a Navigable River, Canal, &c.

See Rivers and Navigation.

4 G. 4. c. 53. Repealing 24 G. 2. c. 45. as to benefit of clergy and offenders liable to transportation or imprisonment.

By stat. 4 *G.* 4. *c.* 53. After reciting stat. 24 *G.* 2. *c.* 45., enacting that "All and every person and persons who shall feloniously "steal any goods, wares, or merchandise of the value of 40*s.* in "any ship, barge, lighter, boat, or other vessel or craft, upon "any navigable river, or in any port of entry or discharge, or in "any creek belonging to such river or port, or upon any wharf or "quay adjacent to such river or port; or who shall be present, "aiding and assisting in committing any such offences, being "thereof convicted or attainted, or being indicted shall stand "mute, not directly answer, &c. or shall peremptorily challenge "above 20, &c. shall be excluded from the benefit of clergy." And whereas it is expedient that a lesser degree of punishment than that of death should be provided for the offences from which the benefit of clergy is so to be taken away as aforesaid, and that the same punishment should be extended in manner hereinafter mentioned, It is enacted, that from and after the passing of this act (*viz.* 8th *July* 1823), every person who shall be lawfully convicted of stealing any goods, wares, or merchandise in any ship, barge, lighter, boat, or other vessel or craft upon any navigable river or canal, or in any port of entry or discharge, or in any creek belonging to any such river, canal, or port, or from any dock, wharf, or quay adjacent to any such river, canal, or port, or of procuring, counselling, aiding, or abetting any such offender, shall be liable at the discretion of the court to be transported beyond the seas for life, or for any term not less than 7

years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding 7 years.

Upon the statute 24 *G.* 2. *c.* 45. the construction is generally confined to such goods and merchandises as are usually lodged in ships, or on wharfs or quays. And therefore where *George Grimes* was indicted on this statute for stealing a considerable sum of money out of a ship in port; though great part of it consisted of *Portugal* money, not made current by proclamation, but commonly current; it was ruled not to be within the statute. *R.* v. *Grimes, Maidstone Lent Ass.* 1752. *Fost.* 79. *S. P. Leigh's case, O. B.* 1764. 1 *Leach,* 52.

And by stat. 2 *G.* 3. *c.* 28. Persons navigating bumboats on the river *Thames* for the purpose of selling liquors, slops, tobacco, fruit, greens, gingerbread, or other such like ware, except such boats as shall be entered at *Trinity House;* and persons taking in exchange, or by way of barter, or unlawfully receiving any ropes, cordage, tackle, goods, stores, or merchandize of any vessels in the river; or cutting, damaging, and spoiling any cordage, cable, buoys, buoy rope, headfast, or other fast or rope belonging to any ship in the river, with intent to steal the same; shall be punished as in the said act is directed; but the act being only local, it is thought fit to refer to the act itself for a more particular description of the offences, and for the manner of conviction and punishment.

2 G. 3. c. 28. Bumboats unlawfully taking in exchange certain stores on the river Thames.

As to felonies committed on navigations and on stage coaches, &c. see stats. 59 *G.* 3. *c.* 27. and *c.* 96. *ante,* tit. Indictment, p. 56, 57.

§ IX. Other Larcenies.

There are moreover divers other larcenies, which are not here specified, the same being inserted under the several titles in this book, to which they more properly belong. That is to say,

Larceny in stealing woollen cloth off the tenters in the night-time, is inserted under the title Woollen Manufacture, Vol. V.

Woollen cloth.

Larceny in stealing linen, fustian, calico, or cotton cloth, yarn, or goods laid to be printed, bleached, or dried, to the value of 10*s.* under the title Linen Cloth, *post.*

Linen, &c.

Larceny in stealing cattle or sheep, under the titles Cattle and Sheep, Vol. V.

Cattle or sheep

Larceny in stealing deer in parks, conies or hares in warrens, or fish in ponds, under title Game, Vol. II.

Deer, conies, &c.

Larceny in stealing hawks or swans, also under title Game.

Hawks, swans

Stat. 13 *G.* 3. *c.* 31. § 4. provided for the trial of offenders in that part of the united kingdom (*i. e.* of *Scotland* and *England*), in which they might have the stolen goods in their possession; and since the union with *Ireland,* a general provision has been made as to this subject by stat. 44 *G.* 3. *c.* 92. § 7., which enacts, "that if any person or persons having stolen, or otherwise feloniously taken money, cattle, goods, or other effects, in any one of the parts of the said U. K., shall afterwards have the same money, goods, chattels, or other effects, or any part thereof, in his, her, or their possession or custody, in any other part of the U. K., it shall and may be lawful to indict, try, and punish,

13 G. 3. c. 31. Offenders removing their booty.

44 G. 3. c. 92. Offenders escaping with stolen goods from one part to any other of the kingdom, may be tried in

the place where the same shall be found.

" such person or persons for theft or larceny, in that part of the " U. K. where he, she, or they shall so have such money, cattle, " goods, or other effects, in his, her, or their possession or cus- " tody, as if the said money, cattle, goods, or other effects, had " been stolen in that part of the U. K." (a)

13 G.3. c.31. Persons receiving such booty.

§ 5. And if any person, in either part of the U. K. shall knowingly *receive* or have any money, cattle, goods, or other effects, stolen, or otherwise feloniously taken in the other part of the U. K.; he shall be liable to be indicted, tried, and punished for the same, in that part of the U. K. where he shall so receive or have the same, as if they had been originally stolen there.

§ X. Receiving stolen Goods.

For the law on this subject, see title Accessary, Vol. I. § III. and IV.

§ XI. Offering Goods suspected to be stolen, to be pawned or sold.

30 G.2. c.24. Persons offering goods to sale, &c. not giving a good account of themselves,

By stat. 30 *G.* 2. *c.* 24. § 7. "*In case any person or persons,* " *who shall offer by way of pawn, pledge, exchange or sale any* " *goods or chattels, shall not be able, or shall refuse to give a sa-* " *tisfactory account of himself, herself, or themselves, or of the* " *means by which he, she or they became possessed of such goods* " *or chattels; or if there shall be any other reason to suspect that* " *such goods or chattels are stolen, or otherwise illegally or clan-* " *destinely obtained; it shall and may be lawful for any person* " *or persons, his, her or their servants or agents to whom such* " *goods or chattels shall be so offered, to seize and detain such* " *person or persons and the said goods or chattels, and to deliver* " *such person or persons, as soon as conveniently may be, into the* " *custody of the constable, or other peace officer, who shall and is* " *hereby required, immediately to convey such person or persons,* " *and the said goods or chattels, before some justice or justices of* " *the peace of the county, riding, division, city, liberty or place* " *wherein the offence shall be committed; and if such justice or* " *justices shall, upon examination and enquiry, have cause to sus-* " *pect that the said goods or chattels were stolen, or illegally or* " *clandestinely obtained, it shall and may be lawful for such justice*

committed.

" *or justices to commit such person or persons into safe custody,* " *for any time not exceeding the space of six days, in order to be* " *further examined; and if upon either of the said examinations,* " *it shall appear to the satisfaction of such justice or justices, that* " *the said goods or chattels were stolen, or illegally or clandestinely* " *obtained, the said justice or justices is and are hereby autho-* " *rised and required to commit the party or parties offending to the* " *common gaol or house of correction of the county, riding, divi-* " *sion, city, liberty, or place wherein the offence shall be committed,* " *there to be dealt with according to law.*" *Vide* stat. 39 & 40 G.3. *c.*99. § 10. *post*, *tit.* Pawning.

(a) Stats. 45 *G.* 3. *c.* 92. and 54 *G.* 3. *c.* 186. make provision for the more easy apprehending and bringing to trial offenders escaping from one part of the U. K. to the other, and from one county to another. With respect to the trial of Receivers, vide Vol. I. *tit.* Accessary, § V.

§ 8. Provides, "That in case such goods or chattels so seized "and detained as aforesaid, shall afterwards appear to be the "property of the person or persons who offered the same to be "pawned, pledged, exchanged, or sold, or that he, she, or they "was or were authorised by the owner or owners thereof to "pawn, pledge, exchange, or sell the same, then and in such "case the person or persons who shall so seize or detain the party "or parties who offered the said goods or chattels, shall be, and "he, she, and they is and are by this act indemnified for having "so done." Persons detaining party, &c. indemnified.

And by *22 G. 3. c. 58.* § 4. "Every person, to whom any "goods or chattels, which have been feloniously stolen or taken, "shall be brought and offered to be sold, pawned or delivered, "shall, and is hereby impowered and required (there being "reasonable cause to suspect that such goods or chattels were "stolen,) to apprehend, secure, and carry before a justice of "the peace, for the county, city, town corporate, riding, "division, liberty or place, where the same goods and chattels "shall be so brought or offered to be sold, pawned, or delivered, "(having it in his or her power so to do,) the person or persons "bringing or offering the same." 22 G. 3. c. 58. Offering stolen goods to be pawned, &c.

§ XII. Advertising a Reward for the Return of stolen Goods.

In furtherance of the laws against receivers, and to check as much as possible their nefarious traffic, it is also enacted by stat. *25 G. 2. c. 36.* § 1. "That any person publicly advertising a "reward, with no questions asked, for the return of things "which have been stolen or lost, or making use of any words in "such public advertisement purporting that such reward shall be "given or paid, without seizing or making inquiry after the per-"son producing such things so stolen or lost; or promising or "offering in any such public advertisement to return to any "pawnbroker or other person who may have bought, or ad-"vanced money by way of loan upon, such things so stolen or "lost, money so paid or advanced, or any other sum of money "or reward for the return of such thing; and any person print-"ing or publishing such advertisement, shall respectively for-"feit the sum of *50l.* for every such offence to any person who "will sue for the same." 25 G. 2. c. 36. Advertising a reward for stolen goods, &c. subjected to forfeiture.

§ XIII. Taking a Reward to help to stolen Goods.

This is a kindred offence growing in truth out of the character of a receiver of stolen goods: for these confederates of the thieves, who are difficult to be discovered, frequently dispose of the goods stolen to the owners for a reward, under the pretence of helping them again to their stolen goods: it is therefore further provided by stat. *4 G. 1. c. 11.* § 4. "That whenever any "person taketh money or reward, directly or indirectly, under "pretence or upon account of helping any person or persons to "any stolen goods or chattels; every such person so taking "money or reward as aforesaid (unless such person doth appre-"hend or cause to be apprehended such felon who stole the same, Taking a reward to help to stolen goods. 4 G. 1. c. 11.

4 G. 1. c. 11. "and cause him to be brought to trial for the same, and give "evidence against him) shall be guilty of felony, and suffer the "pains and penalties of felony, according to the nature of the "felony committed in stealing such goods, and in such and the "same manner as if such offender had himself stolen such goods "and chattels in the manner and with such circumstances as the "same were stolen."

1 G. 4. c. 115. repealing 4 G. 1. c. 11. § 4. as to punishment of death. Stat. 1 *G.* 4. *c.* 115. § 1. after reciting stat. 4 *Geo.* 1. *c.* 11. § 4. *supra*, enacts that so much of the said act as inflicts the punishment of death on the offence hereinbefore recited shall be repealed.

Instead of the punishment of death, offenders shall be liable to transportation, &c. § 2. Enacts, that all persons duly convicted of the said offence hereinbefore recited, which was punishable with death under the above-recited act, shall be liable to be transported beyond the seas for life, or for such term, not less than seven years, as the court before which such person shall be convicted shall adjudge; or shall be liable, in case the said court shall think fit, to be imprisoned only, or imprisoned and kept to hard labour in the common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.

Reward, &c. By stat. 6 *G.* 1. *c.* 23. § 9. Whosoever shall discover, apprehend, and prosecute to conviction of felony without benefit of clergy any offender against the above law shall be entitled to a reward of 40*l.* for every such offender, and a certificate, &c.

On stat. 4 *G.* 1. *c.* 11. the noted *Jonathan Wild* was convicted and executed; the principal felon being examined as a witness on the part of the crown. *O. B.* 1725. 4 *Blac. Com.* 132. 2 *East's P. C.* 770. 783.

§ XIV. Charges of Prosecution and Conviction, how to be paid.

For this subject, see titles **Costs** and **Evidence**, Vol. I.

Information for Larceny.

County of ——. } *THE information and complaint of* A. B. *of the parish of* —— *in the county of* ——, *esquire, taken this* —— *day of* —— *in the year of our Lord one thousand eight hundred and* —— *before me* —— *one of H. M.'s justices of the peace for the said county, who being upon oath saith, that on the* —— *day of* —— *now last past, at the parish of* —— *in the said county* [*20 silver spoons*, or as the case may be] *of the goods and chattels of this informant were feloniously stolen, taken and carried away; and that he hath just cause to suspect and does suspect and verily believes that* C. D. *late of the parish last aforesaid, in the county aforesaid, labourer, did then and there feloniously steal, take, and carry away the same against the peace, &c.: And thereupon this informant prayeth me the said justice to issue my warrant to apprehend the said offender, in order that he may be dealt with according to law, and justice done in the premises.*

A. B.

Taken and sworn the day and year first abovewritten, before J. P.

Warrant for Larceny.

County of ——— To the constable of ———

FORASMUCH as A. I. *of* ——— *in the county of* ———, *yeoman, hath this day made information and complaint upon oath before me* ——— *one of his majesty's justices of the peace for the said county, that this present day divers goods of him the said* A. I. *to wit,* ——— *have feloniously been stolen, taken, and carried away from the house of him the said* A. I. *at* ——— *aforesaid, in the county aforesaid, and that he hath just cause to suspect, and doth suspect, that* A. O. *late of* ———, *yeoman, feloniously did steal, take, and carry away the same; These are therefore to command you forthwith to apprehend him the said* A. O., *and to bring him before me to answer unto the said information and complaint, and to be further dealt with according to law: Herein fail you not. Given under my hand and seal the* —— *day of* ——— *in the year* ———.

Note, For warrant to search for stolen goods, see Search Warrant. Vol. V.

Leather.

Concerning the duties on leather, see title Excise, Vol. II. p. 185.

THERE are several statutes unrepealed, which were made before the first year of the reign of *James* I. concerning leather: but the act made in that year renders them all useless, the same being intended to reduce all the acts into one relating to that commodity; which same thing was attempted in that king's reign, with success, in divers other articles.

Therefore in this title I shall go no farther back than stat. 1 *J. c.* 22. And to avoid abundance of repetitions, I will first insert the methods of recovering the several penalties, and will then proceed with this article in its several progresses, in the order of time, from the first flaying of the hide, to its being at last sold and manufactured in leather, or exported.

Stat. 1 *J.* 1. *c.* 22. which was continued and amended by stat. 13 & 14 *C.* 2. *c.* 7. stat. 9 *Ann. c.* 11. and 24 *G.* 3. *c.* 19. is now by stat. 48 *G.* 3. *c.* 60. § 1. repealed, and the several regulations for the flaying, cutting, and manufacturing of hides are principally dependant upon the following statutes.

IV. *Of the searching of Leather.*
[1 W. sess. 1. c. 33.]

V. *Of the selling of Leather.*
[4 J. 1. c. 6.—1 W. sess. 1. c. 33.—12 G. 2. c. 25.]

§ I. Of the cutting, flaying, and inspecting of Hides.

5 G.4. c.57. By stat. 5 *G.* 4. *c.* 57. dated 9*th June*, 1824, and intituled *An act to repeal four acts of H. late M., relating to the use of horse hides in making boots and shoes, and for better preventing the damaging of raw hides and skins in the flaying thereof,* reciting the passing of stat. 39 & 40 *G.* 3. *c.* 66. intituled *An act to repeal so much of an act passed in the 2d year of* James *the First, as prohibits the use of horse hides in making boots and shoes; and for better preventing the damaging of raw hides and skins in the flaying thereof:* and of stat. 41 *G.* 3. (U. K.) *c.* 53. passed to amend stat. 39 & 40 *G.* 3. c.66. and of stat. 43 *G.* 3. *c.* cvi. to extend the provisions of stats. 39 & 40 *G.* 3. *c.* 66. and 41 *G.* 3. (U. K.) *c.* 53. and to alter and amend the same as to the cities of *London* and *Westminster*, and borough of *Southwark*, and liberties thereof, and all places within 15 miles of the *Royal Exchange* of the said city of *London*: And the passing of stat. 48 *G.* 3. c. 71. for repealing stat. 43 *G.* 3. *c.* 106. and for making other provisions in lieu thereof: And whereas the provisions of the said four recited acts are no longer necessary, and have been found oppressive in their operation, and it is expedient that the said acts should be repealed; it is enacted, that from and after 5*th July*, 1824, the said four recited acts shall be, and the same are respectively hereby repealed, except only so far as the said first recited act repeals any former statute or statutes, or any part thereof, and all and every which said statutes or statute, or the part or parts thereof so repealed, *viz.* so much of stats. 2 [or, 1] *J.* 1. *c.* 22. as prohibits shoemakers from putting into boots and shoes, &c. leather made of horse hides, and so much of stat. 9 *Ann. c.* 11. as relates to the gashing of hides, shall remain and continue repealed to all intents and purposes whatsoever.

39 & 40 G.3. c.66.

41 G.3. U.K. c.53.

43 G.3. c.cvi.

48 G.3. c.71.

Recited acts repealed, except so far as the first recited act repeals any former statute.

§ II. Of the tanning of Hides.

By stat. 9 *An. c.* 11. § 12. If any tanner shall shave any hide or calf skin before it be thoroughly tanned, he shall forfeit the same or the value; but this provision is repealed by stat. 56 *G.* 3. *c.* 110. § 4., which enacts, that it shall be lawful for any entered tanner to take out of the wooze and shave any hide or skin, or to cut and separate therefrom the thin parts thereof: Provided, that such tanner shall give six days' previous notice in writing to the officer of excise under whose survey he shall then be, of his intention or desire so to do, specifying in such notice the day and hour when he will take any such hides or skins out of the wooze, and the number to be taken out, and whether the same are to be so taken out for the purpose of being shaved, or for the thin parts to be cut off and separated; and if any tanner shall take any hides or skins or parts or pieces of hides or skins out of the wooze for either of the purposes aforesaid, or for any other purpose, except by shifting the same into other wooze in the same entered

Tanners may take out of the wooze, and shave hides, &c. notice to be given to the proper officer.

Penalty on tanners removing or concealing hides from the view of the officer, 200l.

premises, or shall remove or conceal any hide or skin, or any piece or part thereof, not being the shaving thereof, from the sight or view of the officer, so that the duties payable thereon shall not be duly charged, the tanner so offending shall for every such offence forfeit 200*l.*; to be recovered (§ 7.) or mitigated by such means as any penalty may be recovered by any laws of excise; one moiety of such penalty shall be to H. M., the other moiety to the informer. *Vid.* Vol. II. p. 185. 9 A. c. 11.

By stat. 13 & 14 *C.* 2. *c.* 7. § 8. Every tanner who shall shave, cut, and rake, the upper leather hides all over, or the necks of their backs and butts, shall forfeit the same or the value thereof, and the searchers and sealers hereafter mentioned may seize them. 13&14 C. 2. c. 7.

By stat. 48 *G.* 3. *c.* 60. § 7. No tanner shall by himself or any other use the trade of a shoemaker, currier, leather cutter, or other artificer exercising the cutting or working of leather, upon pain of forfeiting every hide and skin by him wrought or tanned during the time, or the value thereof, to be recovered by action. 48 G. 3. c. 60.

And by stat. 52 *G.* 3. *c.* 94. § 7. He shall lose the further sum of 100*l.*, to be sued for and recovered according to the laws of excise, or by action of debt, &c. 52 G. 3. c. 94.

§ III. Of the currying of Hides.

And by stat. 12 *G.* 2. *c.* 25. § 4. 5. 6. If any currier shall refuse to curry any leather brought or sent to him by any person dealing or working in leather, or shall neglect to curry the same in sixteen days between *September* 28 and *March* 25, and in eight days in the remaining part of the year, he shall, on conviction before one justice, on the oath of one witness, forfeit 5*l.* to be recovered by distress; half to the informer and half to the poor. The justice may mitigate according to his discretion. Persons aggrieved may appeal to the next sessions, the determination there to be final; and no *certiorari* to be granted. 12 G. 2. c. 25. Refusing or neglecting to curry leather in certain time.

By stat. 56 *G.* 3. *c.* 110. § 5. It shall not be lawful for any currier or curriers, or other person or persons not being an entered tanner, to use sumack in or about the currying of any hide or skin, or in the preparation or dressing of any leather, except only for the purpose of colouring such leather, upon pain of forfeiting for each and every such offence the sum of one hundred pounds. 56 G. 3. c. 110 Curriers using sumack in currying hides, &c except for colouring leather penalty, 100l.

§ IV. Of the searching of Leather.

By stat. 1 *W.* 3. *sess.* 1. *c.* 33. § 4. The wardens of the curriers shall not visit, search, or seize, any leather, hide, or skin, but such as shall be curried or dressed within *London* or three miles thereof, by some member of their own company, nor in any other place but in the open market, or in the shops, houses, or warehouses of such curriers. 1 W. 3. sess. 1 c. 33.

§ V. Of the selling of Leather.

By stat. 4 *J.* 1. *c.* 6. § 2. No person shall incur any penalty for selling or buying any sheep skins unsearched or unsealed. 4 J. 1. c. 6.

But by stat. 12 *G.* 2. *c.* 25. § 1. All persons, who deal or work in leather, may buy all sorts of tanned leather in open fair or

market, whether curried or uncurried, being first searched and sealed, and may cut and sell the same in any small pieces in their open shops.

And by stat. 1 *W.* 3. *sess.* 1. *c.* 33. § 5. All dealers or workers in leather may buy all sorts of red tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed, and may sell it again in their open shops, or cut and convert it into other made ware.

Importing of Leather Gloves or Mitts, See Gloves.

Leet.

Meaning of the word.

LEET (*leth, læthe, lathe*) is of *Saxon* original, and seemeth to be no other than the court of the *lathe;* as the county court is the court of the county. For in ancient times the counties were subdivided into lathes, rapes, wapentakes, hundreds, and the like. And the sheriff twice a-year performed his *tourn* or perambulation, for the execution of justice throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain districts. And from hence, these courts, holden within particular parts of the county, have descended unto us without variation, under the name of the *leet, leth,* or *lathe* courts.

Leet, what.

The *court leet* is a court of record, having the same jurisdiction within some particular precinct which the sheriff's *torn* hath in the county. 2 *Haw. c.* 11. § 1.

Leet derived from the torn.

For the leet or view of frankpledge, was by the king (for the ease of the people) divided, and derived from the torn; who did grant to the lords to have the view of the tenants and resiants within their manors; so as the tenants and resiants should have the same justice that they had before in the torn, done unto them at their own doors, without any charge or loss of time, 2 *Inst.* 71.

Frankpledge.

The institution hereof for keeping of the king's peace was, that every freeman at his age of twelve years (except peers, clergymen, and tenants in ancient demesne, 2 *Haw. c.* 10. § 11.) should in the leet, if he were in any leet, or in the torn, if he were not in any leet, take the oath of allegiance to the king; and that pledges of sureties should be found for his truth to the king, and to all his people, or else to be kept in prison: This frankpledge consisted most commonly of ten households, which the *Saxons* called *theothung,* in the north parts they call them *tenmentale,* in other places of *England, tithing:* whereof the masters of the nine families who were bound were of the *Saxons* called *freoborg,* which in some places is to this day called *freeborrow,* that is, free surety, or frankpledge, and the master of the tenth household was called *theothungmon,* to this day in the west called *tithingmen,* and *tithenheofod,* and *freoborher,* that is, *capitalis plegius,* chief pledge; and these ten masters of families were bound one for another's family, that each man of their several families should stand to the law, or if he were not forthcoming that they should answer for the injury or offence by him committed. And the precinct of this frankpledge was called *decenna,* because it consisted most commonly of ten households; and every man of

those several households, for whom the pledge of surety was taken, were called *decennarii:* which names are continued as shadows of antiquity to this day. 2 *Inst.* 73.

And by the due execution of this law, such peace was universally holden within this realm, as no injuries, homicides, robberies, thefts, riots, tumults or other offences were committed; so as a man with a white wand might safely have ridden before the conquest with much money about him, without any weapon, throughout *England.* 2 *Inst.* 73.

[Such a system of jurisprudence, however, has long since ceased to be practicable.]

But no person is obliged to appear at any leet within the precincts whereof he doth not reside. 2 *Haw. c.* 10. § 12.

But though every one must be within some leet, none can be of two leets: and it seems he whose house stands in two leets, is said to be commorant [resident] in that wherein his bed stands. *Wood's Inst. b.* 4. *c.* 1. § 16.

Leet when to be holden.

He that claims a leet by charter must hold it on the days prescribed by the charter; he that claims it by prescription may claim to hold it once or twice every year, at any such days as shall upon reasonable warning be appointed, if the usage hath been so that it hath been kept at uncertain times; or else it ought to be kept at such certain days and times as by prescription hath been certainly used. 2 *Inst.* 72.

Offences within the leet, not inquirable in the torn.

If a nuisance done within the jurisdiction of the leet be not presented in the leet, the sheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff, to inquire thereof. 4 *Inst.* 261.

Steward may commit for an affray.

It seems that a court leet is so far entrusted with the keeping of the peace within its own precinct, that the steward of it may by recognizance bind any person to the peace, who shall make an affray in his presence, sitting the court, or may commit him to ward, either for want of sureties, or by way of punishment, without demanding any sureties of him, in which case he may afterwards impose a fine according to his discretion. 2 *Haw. c.* 1. § 15.

What felonies are cognizable in the leet.

The leet hath power to receive indictments of felonies at the common law, but not of felonies by act of parliament, unless specially limited thereto. 2 *Hale,* 71.

Other public offences.

Furthermore, this court hath cognizance of a great number of offences, both by the common law, and by statute; as, for instance, tippling in alehouses; assaults whereby bloodshed ensueth; common barrators; bawdy-houses; defects in bridges and highways; destroyers of ancient boundaries; bakers; brewers; butchers; curriers; decinors or suitors not appearing in the leet; estrays, waifs, and treasure trove; eaves droppers; forestallers, regrators, ingrossers; destroyers of game; gamesters; hedge-breakers; neglectors of hue and cry; higglers; innholders; millers; night-walkers; common nuisances; want of pillory and stocks, and common pounds; rescous; scolds; shoemakers; searchers of leather; stoned horses of two years old put on the common; victuallers; constables neglecting watch and ward; weights and measures; and many others by particular statutes. *Wood's Inst. b.* 4. *c.* 1. § 16.

Private offences.

But a man cannot be presented in the leet for surcharging the

common, or for digging in the common; because this concerns the private not the public interest, and belongs rather to the court baron to inquire of it. *Wood. Inst. b.* 4. *c.* 1.

Within what time offences are cognizable.

Also no offence is cognizable in the leet, unless it arose since the holding of the last court. 2 *Haw. c.* 10. § 50.

Constable chosen in the leet.

The constables of common right are to be chosen and sworn in the leet or torn. 2 *Haw. c.* 10. § 37.

Jurors.

The leet seems not to be within the equity of the statute of 1 *R.* 3., which requires that the jurors in the torn shall have 20*s.* a-year freehold, or 26*s.* 8*d.* copyhold or customary; for it is said, that any person happening to be present at the leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the leet or not; by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 *Haw. c.* 10. § 68.

Indictments to be indented.

Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the steward to prevent embezzling. 2 *Haw. c.* 10. § 69.

Indictments of felonies how to be certified.

Although the leet may receive indictments of felony, yet it cannot hear and determine them, but must send them to the gaol delivery, there to be heard and determined, if the offenders are in custody; or remove them by *certiorari* into the king's bench, that process may be made upon them to outlawry. 2 *Hale*, 71.

Traverse.

It seems to be agreed that a presentment in the leet of any offence within the jurisdiction of the court, being neither capital nor concerning any freehold, subjects the party to a *fine* or *amerciament* without any further proceeding, and admits of no traverse to the truth of it: But if it touch the party's freehold, it may be removed into the king's bench and there traversed. 1 *Haw. c.* 76. § 72. 82. 2 *Haw. c.* 10. § 76.

Fine.

A *fine* is a pecuniary punishment, assessed by the steward, for an offence or contempt committed in court, or by public officers out of court, in administration of their offices; a fine is always assessed by the steward, and is not to be affeered, though sometimes it is called an amerciament: and the lord by a special warrant to the bailiff may distrain, or he may have an action of debt for a fine imposed, but he cannot imprison. And this is the only court that can fine and not imprison. *Wood's Inst. b.* 4. *c.* 1. 2 *Hale*, 61.

Amerciament.

An *amerciament* is a pecuniary punishment, assessed by the homage or jury, for offences committed out of court by private persons, to be mitigated by affeerers (from *affeurer*, to tax,) who are to affirm the reasonableness thereof upon their oaths, where no express penalty is inflicted by statute; and for this also the lord may have an action of debt, or may distrain of common right, and impound the distress, or sell it at his pleasure, but cannot imprison for it. *Wood's Inst. b.* 4. *c.* 1. § 16.

Amerciament, how recovered.

And upon presentment of a nuisance, the steward may either amerce the person, and order him also to remove it by such a day, under pain of forfeiting a certain sum; or he may order him to remove it under such a pain, without amercing him at all: And on presentment at another court, that he hath not removed such nuisance (having had notice thereof), the pain may be recovered by distress or action of debt, without farther proceeding. 2 *Haw. c.* 10. § 32.

It seemeth that of common right any court leet, with the assent of the tenants, may make bye-laws under certain penalties, in relation to matters properly within the cognizance of such court, as the reparation of the highways and the like. And also a court baron by custom may make bye-laws for the well-regulating of commons, and such like private matters. And therefore where a court leet and baron are holden together, as they usually are, it seems that what is transacted therein in relation to public matters, shall be applied to the jurisdiction of the court leet, and what is done in relation to private matters, shall be intended to be done by the court baron. 2 *Haw. c.* 10. § 63. Bye-laws.

The lord of the leet ought to have a pillory and tumbrel; and for want thereof he may be fined, or his liberty seized. *Cro. El.* 698. Pillory.

But the stocks are to be provided at the charge of the town; for originally they were not to punish, but to keep men in hold. *Wood's Inst. b.* 4. *c.* 1. § 16. Stocks.

But the business of the leet hath declined for many years, and is devolved on the quarter sessions. Business devolved on the sessions.

Legacies. See **Stamps**, Vol. V.

Letters (Threatening.)

[9 G. 1. c. 22.—27 G. 2. c. 15.—30 G. 2. c. 24.—52 G. 3. c. 64. —4 G. 4. c. 54.

THE occasion and object of the laws in force against the offence of sending threatening letters and writings to others are well explained in the preamble of the *Black Act*, (9 *G.* 1. *c.* 22.) which recites that ill-designing and disorderly persons had of late associated themselves, &c. "and had sent letters in fictitious names to several "persons demanding venison and money, and threatening some "great violence if such their unlawful demands should be refused, "or if they should be interrupted in or prosecuted for such their "wicked practices; and had actually done great damage to several persons who have either refused to comply with such demands, or have endeavoured to bring them to justice:" and then enacts, that "if any person or persons (whether armed or "disguised or not) shall knowingly send any letter without any "name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing; or shall forcibly rescue any person being lawfully in custody of any officer "or other person for any such offence; or if any person or persons shall by gift or promise of money or other reward procure "any of H. M.'s subjects to join him or them in any such unlawful act; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony without benefit of "clergy." 2 *East's P. C.* 1106. 9 G. 1. c. 22. made perpetual by 31 G. 2. c. 42. Sending letter without name, or with fictitious name, demanding any valuable thing, felony without clergy.

By § 4. Such offenders not surrendering themselves when demanded by the king's proclamation, and making full confession of their accomplices, are made guilty of felony without benefit of clergy. And by § 5. persons who after the time for such sur- Surrender clause.

9 G. 1. c. 22.

render expir d shall "conceal, aid, abet, or succour any such offender, knowing him to have been so charged, and to have been required to surrender by such order," shall on conviction be guilty of felony without benefit of clergy.

Trial.

By § 14. Such offences may be tried in any county of England.

27 G. 2. c. 15. Extends to sending such letters, threatening to kill, &c. or burn houses, &c. though no valuable thing be demanded.

Stat. 27 *G.* 2. *c.* 15. recites the said law, and "that divers letters "had been sent to several of his majesty's subjects threaten- "ing their lives, or the burning their houses, which letters not "demanding money, venison, or any valuable effects were not "subject to the penalties of the said act;" and then enacts, that "if any person or persons, after the 1st of *May* 1754, "shall knowingly send any letter without any name subscribed "thereto, or signed with a fictitious name or names, letter or "letters, threatening to kill or murder any of the king's sub- "ject or subjects, or to burn their houses, outhouses, barns, "stacks of corn or grain, hay, or straw; though no money or "venison, or other valuable thing shall be demanded in or by "such letter or letters; or shall forcibly rescue any person being law- "fully in custody of any officer or other person for the said offence; "every person so offending, being thereof lawfully convicted, shall "be adjudged guilty of felony without benefit of clergy."

30 G. 2. c. 24. Sending or delivering letter or writing with or without names or with fictitious names, &c. threatening to accuse another of offence punishable with death, transportation, or infamous punishment, with intent to extort; punishable as misdemeanor or with transportation.

Stat. 30 *Geo.* 2. *c.* 24. § 1. [which does not repeal the former stat. of 9 *G.* 1. *c.* 22.] Enacts that "all persons who shall "(after the 29th of *September* 1757) knowingly send or deliver "any letter or writing with or without a name or names sub- scribed thereto, or signed with a fictitious name or names, letter or "letters, threatening to accuse any person of any crime punish- "able by law with death, transportation, pillory (*a*), or any other "infamous punishment, with a view or intent to extort or gain "money, goods, wares, or merchandises, from the person or "persons so threatened to be accused, shall be deemed of- "fenders against law and the public peace; and the court "before whom such offender or offenders shall be tried shall, in "case he, she, or they be convicted of any of the said offences, "order such offender or offenders to be fined and imprisoned, "or to be put in the pillory (*a*), or publicly whipped, or to be "transported as soon as they conveniently may be (according to "the laws made for transportation of felons) to some of H. M.'s "colonies or plantations in *America* for the term of seven years, "as the court shall think fit to order."

4 G. 4. c. 54. Threatening letters.

By stat. 4 *G.* 4. *c.* 54. § 3. After reciting, that whereas by stat. 9 *G.* 1. *c.* 22. (the *Black Act*), it is enacted, that if any person or persons shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing, or shall forcibly rescue any person being lawfully in custody of any officer or other person for any such offence, or shall, by gift or promise of money, or other reward, procure any of H. M.'s subjects to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in the cases of felony without benefit of clergy: and that whereas by stat. 27 *G.* 2. *c.* 15. it is amongst other things enacted, that if any person or persons shall knowingly

(*a*) By 56 *G.* 3. *c.* 138. This punishment can only be inflicted in cases of perjury and subornation of perjury. See title Pillory, &c. *post.*

send any letter, without any name subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to kill or murder any of H. M.'s subject or subjects, or to burn their houses, outhouses, barns, stacks of corn or grain, hay or straw, though no money or venison or other valuable thing shall be demanded in or by such letter or letters, or shall forcibly rescue any person being lawfully in custody of any officer or other person for the said offence, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy: And that whereas by stat. 30 *G.* 2. *c.* 24. it is amongst other things enacted, that all persons who shall knowingly send or deliver any letter or writing, with or without a name or names subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain money, goods, wares, or merchandizes from the person or persons so threatened to be accused, shall be deemed offenders against law and the public peace; and the court before whom such offender or offenders shall be tried, shall, in case he, she, or they shall be convicted of any of the said offences, order such offender or offenders to be fined and imprisoned, or to be put in the pillory or publicly whipped, or to be transported for the term of seven years, as the court in which any such offender or offenders shall be convicted shall think fit and order: And whereas it is expedient that a lesser degree of punishment should be provided for the offence of sending threatening letters, in the cases mentioned in the two first recited acts, and that the same degree of punishment should be inflicted in the cases mentioned in the last recited act, and be extended to persons accessary to the said offences; it is enacted, That from and after the passing of this act, *viz.* (8th *July* 1823,) so much of the said recited acts of the 9 *G.* 1. and of the 27 & 30 *G.* 2. as relates to the sending and delivering letters in the cases therein respectively mentioned, shall be and the same is hereby repealed, save only as to offences committed before the passing of this act, as to which the said acts shall continue in force; "and that from and after the passing of this act, if any person shall knowingly and wilfully send or deliver any letter or writing, with or without any name or signature subscribed thereto, or with a fictitious name or signature, demanding money or other valuable thing, or threatening to kill or murder any of H. M.'s subjects, or to burn or destroy his or their houses, outhouses, barns, stacks of corn or grain, hay or straw, or shall knowingly and wilfully send or deliver any such letter or writing, threatening to accuse any of H. M.'s subjects of any crime punishable by law with death, transportation or pillory, or of any infamous crime, with a view or intent to extort or gain money, security for money, goods or chattels, wares or merchandise, from the person or persons so threatened, or shall procure, counsel, aid, or abet the commission of the said offences, or of any of them, or shall forcibly rescue any person being lawfully in custody of any officer or other person for any of the said offences, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for such term, not less than seven years, as the court shall

4 G.4. c.54.

Recited acts, so far as relate to sending threatening letters, repealed; and persons sending such letters, and their accessaries, to be liable to transportation or imprisonment.

4 G.4. c.54. adjudge, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years." See § 4. as to threatening to accuse others of crimes with intent to extort money, &c. *ante*, Vol. I. *tit*. Assault. § IV.

52 G.3. c.64. Persons knowingly sending or delivering any letter or writing, with or without a name, threatening to accuse any person of any crime, &c. with a view to extort money, goods, &c. are to be punished, as if they had sent or delivered such letters, or writings, with a view to extort money, goods, &c.

Stat. 52 *G.* 3. *c.* 64. § 1. Enacts that "all persons who shall "knowingly send or deliver any letter or writing with or with-"out a name or names subscribed thereto, or signed with a "fictitious name or names, letter or letters, threatening to accuse "any person of any crime punishable by law with death, trans-"portation, pillory (*a*), or any other infamous punishment, with "a view or intent to extort or gain any bond, bill of exchange, "bank note, promissory note, or other security for the payment "of money, or any warrant or order for the payment of money, "or delivery or transfer of goods or other valuable thing, shall "be deemed offenders against law and the public peace, and "shall be liable to be prosecuted and punished in like manner as "if they had sent or delivered such letter or writing with a view "or intent to extort money, goods, wares, or merchandises from "the person or persons so threatened."

Distinctions between the statutes as to the *demand* required by the statute.

It is observable that there are important differences between the statutes in respect of the *demand*. The stat. 9 *G.* 1. *c.* 22. requires that there should be a demand of "money, venison, or "other valuable thing." Under stat. 27 *G.* 2. *c.* 15. no demand of any thing is necessary. The stat. 30 *G.* 2. *c.* 24. only applies to cases where the letter or writing falls short of an actual demand, and is sent "with a view or intent to extort or gain "money, goods, wares, or merchandises." The late stat. 52 *G.* 3. *c.* 64. extends stat. 30 *G.* 2. *c.* 24. to cases where the letter or writing is sent "with a view or intent to extort or gain any bond, "bill of exchange, bank note, promissory note, or other security, "for the payment of money, or any warrant or order, for the "payment of money, or delivery or transfer of goods, or other va-"luable things." 2 *East*'s *P. C.* 1118. 2 *Russ.* 1836.

Distinction as to "writing," and "letter."

There is also a material distinction between the statutes in this, that stats. 30 *G.* 2. *c.* 24. and 52 *G.* 3. *c.* 64. contain the word "writing" as well as "letter," which is not included in stats. 9 *G.* 1. *c.* 22. or 27 *G.* 2. *c.* 15.

Conviction on the 27 G.2. c.15. for sending a letter to the prosecutor threatening "to set fire to his mill, and likewise to do all the public injury they were able to him in all his farms and seteres," held wrong, he not then having any *mill* to which the threat of burn-

Shall knowingly send any letter signed with a fictitious name threatening to burn houses, &c.] *John Jepson* and *George Springett* were indicted upon stat. 27 *G.* 2. *c.* 15. for sending to the prosecutor, Mr. *Woodgate*, a letter in the following terms, (*viz.*)

"Mar[th]. th. 3. 1798."

"Mr. *Woodgate*, Sir. i. am varey Searey to acquaint you that "we are detarmed to set youre Mell on Fire and likewise to do all "the publake Ingrey that we are able to do you in all youre "Farmes and Seteres whitch you are in possion of without you on "next Farmes Day Release that *Ann Wood* whitch you put in "Confinemint Sir we menson in a few lines and we hope if you "have any Regard for you Wife and Famally you will take "owre meanen without any thing further and if you do not we "will porsest as far as we posarple can so you may Lay youre "hand at your hart and strive you autermast Ruine. I shall not

(*a*) See *ante*, p. 281. n. (*a*.)

" menson nothing more to you untell sutch Time as you find the " few Lines a Fact with oure Repest So no more at this Time " from me. " R. R."

ing would apply, (having parted with it three years before,) and the threat as to the *farm*, &c. not necessarily implying a *burning*.

It was proved that the letter was of the hand-writting of *Jepson*, and that it was thrown by the other prisoner into Mr. *Woodgate's* yard, from whence it was taken by a servant of Mr. *Woodgate*, and delivered to him. Mr. *Woodgate* swore, that he had a share in a mill three years before this letter was written, but had no mill at that time. That he held a farm when the letter was written and came to his hands, and still holds it, with several buildings upon it. It was objected, that this was not such a letter as comprehended the offence in the act of parliament. At a conference of the judges, after conviction, in *Mich. Term* 1798, (absent *Eyre* C. J.) it was agreed, that the prosecutor having no such property at the time as the mill which was threatened to be burnt, that part of the letter must be laid out of the question. That as to the rest of it, Lord *Kenyon* C. J. and *Buller* J. were of opinion, that the letter must be understood as also importing a threat to burn the prosecutor's farm-house and buildings: but the other judges not thinking that a necessary construction, the conviction was holden wrong, and a pardon recommended. (*a*) *Rex* v. *Jepson and Springett*, *Essex Sum. Ass.* 1798. cor. *Ld. Kenyon* C. J. M. *S. C. C. R.* 2 *East's P. C.* 1115. *S. C.*

Where the wife wrote a threatening letter, and the husband *carried* it to the party threatened; held that the husband, though privy to the writing, was not within the statutes 9 G. 1. and 27 G. 2.; nor could the wife alone be convicted, unless she wrote and sent it without the husband, who delivered it, being privy to the contents.

Send any letter.] *John Hammond* and *Mary Hammond* were indicted at *O. B. May* 1787, on stats. 9 *G.* 1. *c.* 22. and 27 *G.* 2. *c.* 15. for feloniously sending a threatening letter to *D. Dancer*, demanding 10*l.* It appeared in evidence that the prisoners were husband and wife, and lived as servants with the prosecutor: that the wife wrote the letter, and that it was delivered to the prosecutor by the husband, who said he found it in the prosecutor's garden; but there was no evidence that he had any knowledge of its contents. It was objected on behalf of the prisoners, that the offence described by the statutes on which the indictment was founded, was " knowingly *sending* a threatening letter:" whereas the evidence only shewed that the wife had written the letter, and that the husband had delivered it; and that there was no proof of its having been *sent* to the prosecutor. The court (*Ashhurst* J. and *Perryn* B.) agreed, that merely *writing* a threatening letter would not constitute the offence within these acts of parliament; that carrying a letter could not be comprehended under the word " send" in the statutes; that the legislature had it not in contemplation that any person would be the carrier of a threatening letter which he himself had written or contrived, and that the act of delivering a threatening letter was not the offence described in those statutes. That if any doubt could be entertained upon that point the legislature itself had removed it; for by the subsequent act, 30 *G.* 2. *c.* 24. the offence of *delivering* as well as *sending* a threatening letter was made a misdemeanor, punishable at the discretion of the court, according to the circumstances of the case. But the court further observed, that there was still a question for the consideration of the jury; for though *Mary Hammond* were

(*a*) But in *Girdwood's* case, 2 *East's P. C.* 1120. and 1 *Leach*, 142. a letter accusing the prosecutor of having taken away the life of a friend of the writer's who was *come to revenge him*, was ruled to be evidence to go to the jury upon a charge of sending a letter threatening to kill and murder the prosecutor.

the wife of the other prisoner, yet if the jury were of opinion that she wrote the letter herself without any intervention of her husband, and sent it by him, without his knowing any thing of the contents, to the prosecutor, she alone might be found guilty; but that otherwise both the prisoners must be acquitted. The jury, on this direction, acquitted both the prisoners. *Rex* v. *John and Mary Hammond, O. B. May* 1787. 1 *Leach*, 444. 2 *East's P. C.* 1119.

It was also holden in the same case, that a *bank-note* is a valuable thing within the meaning of stat. 9 *G.* 1. *c.* 22., and is sufficiently *demanded* by signifying an intention to impute the crime of murder to the party from whom it is attempted to be obtained. —*Et vide* stat. 52 *G.* 3. *c.* 64. § 1. *ante*, p. 282.

Proof of a prisoner's delivering a threatening letter sealed up to a person to carry to the post-office, is evidence of his knowledge of its contents, if the jury so find it. *R.* v. *Girdwood,* 2 *East's P. C.* 1120. 1 *Leach*, 142.

In *Lloyd's* case, 2 *East's P. C.* 1122. the letter was dropped in a vestry-room frequented by the prosecutor every *Sunday* morning, where it was picked up by the sexton, and given to the prosecutor: and Mr. Justice *Yates* had no doubt but that this was a sending within the act.

So in *Jepson* and *Springett's* case, *ante*, the letter was thrown into the prosecutor's yard, from whence it was taken up by the prosecutor's servant and delivered to him.

Without any name subscribed thereto.] A threatening letter, in which the writer makes himself known to the person to whom it is sent, either from its handwriting, or by the subject of its contents, though not signed by the writer in any name, is not within stats. 9 *G.* 1. or 27 *G.* 2., for by making himself known in the letter, it is the same thing as if he had signed his name to it. *Hemming's case, Warwick Sum. Ass.* 1799. *cor. Chambre* B. 2 *East's P. C.* 1116. 1 *Leach*, 445. (*n.*)

In the case of *Michael Robinson*, it was holden, that the sending a letter signed with *initials* only, is a sending a letter *without a name* within stat. 9 *G.* 1. *c.* 22. *Buller* J., in delivering the opinion of the judges on this point, said, "whether the letter be "with or without a name, is a simple fact appearing on the face "of the letter itself. It is signed with two letters, *R. R.*, which "are so far from being a name, that no man, on looking at the "letter only, can tell whether it meant to refer to any name, or "what that name was." *Robinson's case,* 2 *East's P. C.* 1110. 2 *Leach*, 749.

To extort and gain money.] In *Edward Major's* case the indictment charged that the prisoner *intending to extort and gain money* from one *Augustine Rayner*, unlawfully, knowingly, and designedly sent to the said *A. R.* a certain letter in writing, &c., thereby threatining, &c. and then set forth the letter as follows: "Sir, I received a letter respecting the bill which I gave you "when we parted; and as you know I have it not in my power to "pay it; and if I had, it is an unjust demand; I have only to observe, that if you do not immediately return it to me as an ac"knowledgement for the obscene offence of sodomy attempted "upon me, &c. I am determined to prosecute you to the utmost "rigour of the law, &c. (Signed) *E. Major*, (and dated) *June* 1st, "1796;" *with a view and intent to extort and gain money* from

the said *A. R.* against the form of the statute, &c. The judges, on reference to them after conviction, in *Michaelmas* term 1796, held the conviction wrong; for the letter was not sent to extort *money*, but to procure delivery up of the bill. *Major's case, O. B. June*, 1796, *and before all the judges, in M. T.* 1796, 2 *East's P. C.* 1118.

It has been decided, upon reference to the judges, that the indictment must set forth the threatening letter, in order that the court may judge whether it falls within the purview of the respective statutes. *Lloyd's case*, cor. *Yates* J. *Hereford Sp. Ass.* 1767. 2 *East's P. C.* 1123.

In prosecutions under stat. 9 *G.* 1. *c.* 22. The trial may be had in *any* county at the option of the prosecutor. *Mortis's case*, 2 *Bl. Rep.* 733.

But there being no provision to extend the same privilege to prosecutions under either of the statutes of *G.* 2. they must be tried (like other cases) in the county where the offence arises.

There is no doubt but that the party may be tried in the county where the letter was delivered to the prosecutor, though written by the prisoner and by him sent in another county. *Girdwood's case*, 2 *East's P. C.* 1120.

The offence of sending a threatening letter may be laid in the county where it is delivered by the post.

An indictment on the stat. 30 *G.* 2. against two defendants for sending a letter to the prosecutor, threatening to accuse him of an unnatural crime, with intent to extort money from him, laid the offence in *Middlesex*, but the letter was dated from *Maidstone* in *Kent*. The sending it was proved by the defendant's confession. It was objected that as the letter was dated and sent by the post from *Maidstone*, the fact of the sending, which constituted the offence, was committed in *Kent*, and the indictment would not lie in *Middlesex*. But Ld. *Mansfield* C. J. held, that as it was directed to the prosecutor in *Middlesex*, where it was delivered, that was a sending in *Middlesex*; for the whole was to be considered as the act of the defendant to the time of the delivery in that county. *Esser's case, Westminster Sittings after Trin.* 7 *G.* 3. 2 *East's P. C.* 1118. See *R.* v. *Burdett, post, tit.* Libel, p. 295.

And it seems as if the prisoner may be tried in the county in which the prisoner sends the letter, though the prosecutor may receive it in another county. The offence described in the statute of 9 *G.* 1. *c.* 22. and 27 *G.* 2. *c.* 15., is that of *sending* the threatening letter: it should seem therefore that the offence is complete, as far as depends on the prisoner, by his putting the letter into the post-office to go into another county. By his act of putting the letter into the post-office in the county of *A.*, he *sends* (in the language of the statutes) it to the prosecutor, though the latter may afterwards receive it in the county of *B.*

Stats. 12 *G.* 1. *c.* 34. § 6. and 22 *G.* 2. *c.* 27. relative to threatening letters to manufacturers in certain trades, will be found under title Servants, Vol. V.

Warrant to apprehend on stat. 4 G. 4. c. 54. for sending a threatening letter, demanding money.

County of ——— } To the Constable of ——— and to all other peace officers in the said county.

FORASMUCH as A. I. *of* ——— *in the said county, gentleman, hath this day made information and complaint upon oath before me* ——— ———, *Esq. one of H. M.'s justices of the peace, in and*

for the said county, that he this morning, from an unknown hand, did receive a certain letter in writing without any name or signature subscribed thereto, directed to him the said A. I. *by the name and description of Mr.* A. I. [or, as the case may be] *demanding of the said* A. I. *the sum of twenty pounds, and threatening to murder the said* A. I. *if the said sum of money were not left and deposited in a certain place on or before the* —— *day of* —— [or as the fact may be]; *and that he, the said* A. I., *hath just cause to suspect, and doth suspect that the said threatening letter was written and sent by one* A. O. *late of* —— *in the said county, labourer. These are therefore to command you in H. M.'s name, forthwith to apprehend and bring before me, or some other of H. M.'s justices of the peace, in and for the said county, the body of the said* A. O. *to answer unto the said complaint, and to be further dealt withal according to law.—Herein fail you not.—Given under my hand and seal, the* —— *day of* —— *in the year of our Lord one thousand eight hundred and* ——.

G. C. (L. S.)

Seditious or defamatory letters. See Libel.
Opening or detaining letters. See Post.
Franking letters. See Post.

Lewdness.

IF any offend their brethren by adultery, whoredom, incest, or any other uncleanness, the churchwardens shall present them to the ordinary, and they shall not be admitted to the holy communion, till they be reformed. *Canon* 109.

But although lewdness be properly punishable by the ecclesiastical law, yet the offence of keeping a bawdy-house cometh also under the cognizance of the law temporal, as a common nuisance, not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes. 3 *Inst.* 205. 1 *Haw. c.* 74. *Obs.* 1.

In general, all open lewdness grossly scandalous is punishable upon indictment at the common law. 1 *Haw. c.* 5. § 4.

In a late case it was held to be an indictable offence for a man to undress himself on the beach and to bathe in the sea near inhabited houses, from which he might be distinctly seen; although the houses had been recently erected, and, until their erection, it had been usual for men to bathe in great numbers at the place in question. *Macdonald* C. B. ruled, that whatever place becomes the habitation of civilised men, there the laws of decency must be enforced. And the court of K. B., when the defendant was brought up for judgment, expressed a clear opinion that the offence imputed to him was a misdemeanor, and that he had been properly convicted. *Rex* v. *Crunden,* 2 *Campb.* 89. In *Rex* v. Sir *Charles Sedley, Sid.* 168. 1 *Keb.* 620. the defendant being indicted for shewing himself naked from a balcony in *Covent Garden* to a great multitude of people, confessed the indictment, and was sentenced to pay a fine of 2000 marks, to be imprisoned a week, and to give security for his good behaviour for three years.

Offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the court in discretion shall seem proper. 1 *Haw. c.* 5. § 5.

And a wife may be indicted together with her husband, and punished with him, for keeping a bawdy-house (*a*); for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex.

But if a person is indicted for frequenting a bawdy-house, it must appear that he knew it to be such a house; and it must be expressly alleged that it is a bawdy-house, and not that it is suspected to be so. *Wood's Inst. b.* 3. *c.* 3.

On an indictment for keeping a disorderly house, a female witness swore, that she was a sailor's wife, and during her husband's absence out of the realm she had often prostituted herself there. Ld. *Raymond* C. J. said it was an odious piece of evidence, and ought not to be heard. *Burl.* tit. Bawdy House.

But it is said a woman cannot be indicted for being a bawd generally, for that the bare solicitation of chastity is not indictable. 1 *Haw. c.* 74. 1 *Salk.* 382.

See the provisions of stats. 25 *G.* 2. *c.* 36. § 5 & 6., and 58 *G* 3. *c.* 70. § 7. for encouraging prosecutions against persons keeping bawdy-houses, or other disorderly houses, under title Gaming, Vol. II.

Indictment for keeping a Disorderly House.

County of ——— } *THE jurors of our lord the king upon their oath present, that* A. O. *late of* ——— *in the said county, labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and at divers other times as well before as after, with force and arms at* ——— *aforesaid, in the county aforesaid, did keep and maintain, and yet doth keep and maintain, a certain common ill-governed and disorderly house, and in the said house, for his own lucre and gain, certain evil and ill-disposed persons, as well men as women, of evil name and fame, and of dishonest conversation, to frequent and come together then and the said divers other times, there unlawfully and wilfully did cause and procure; and the said men and women, in the said house, at unlawful times as well in the night as in the day then and the said other times there to be and remain drinking, tipling, whoring, and misbehaving themselves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuisance of all the subjects of our said lord the king, and against the peace of our said lord the king, his crown and dignity.*

(*a*) Before the reign of *Henry* VII. there were eighteen of these infamous houses, and *Henry* VII. for a time forbad them: But afterwards, twelve only were permitted, and had signs painted on their walls; as a *Boar's Head, The Cross Keys, The Gun, The Castle, The Crane, The Cardinal's Hat, The Bell, The Swan, &c.* 3 *Inst.* 205.

Libel.

§ I. *What it is.*
II. *Who are punishable for it.*
III. *How punishable.*
[32 G. 3. c. 60.]
IV. *Power of Justices of the Peace.*
V. *Prevention and Punishment of Blasphemous and Seditious Libels.*
[60 G. 3. c. 8.]

§ I. What it is.

A LIBEL, in a strict sense, is taken for a malicious defamation of any person, expressed either in printing or writing, signs or pictures, and tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule. 1 *Haw. c.* 73. § 1. *Wood's Inst. b.* 3. *c.* 3.

Ironical defamation. *A malicious defamation.*] And the scandal which is expressed in a scoffing and ironical manner is as properly a malicious defamation, as that which is expressed in direct terms; as where a person proposes one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar; and the like: which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so. 1 *Haw. c.* 73. § 4.

Expressing one or two letters only of a name. And from the same foundation it hath also been resolved that a defamatory writing, expressing only one or two letters of a name, in such a manner that, from what goes before and follows after, it must needs be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if restrained to any other meaning, is as properly a libel, as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions: and it is a ridiculous absurdity to say, that a writing which is understood by every the meanest capacity cannot possibly be understood by a judge and jury. 1 *Haw. c.* 73. § 4.

Whether true or false is not material. It matters not whether the libel be true, or whether the party against whom it is made be of good or bad fame: for in a settled state of government the party grieved ought to complain for any injury done to him in the ordinary course of law, and not by any means to revenge himself, either by the odious course of libelling, or otherwise. But this is to be understood, when the prosecution is by information or indictment: but in an action on the case, which is to repair the party in damages, the defendant may justify

the truth of the facts, and shew that the plaintiff hath received no injury. 5 *Rep.* 125. 3 *Blac. Com.* 126.

General accusation is not a libel.

Of any person.] Where a writing inveighs against mankind in general, or against a particular order of men, as for instance men of the gown, this is no libel; but it must descend to particulars and individuals to make it a libel. 3 *Salk.* 224.

Libels on persons employed in a public capacity receive an aggravation, as they tend to scandalise the government by reflecting on those who are entrusted with the administration of public affairs; for they not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned to acts of revenge, but also have a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition. 1 *Haw. c.* 73. § 7. 1 *Russ.* 324.

R. v. Cobbett. Ridicule or obloquy on the government.

Rex v. *Cobbett, E. K. B.* 1804. *Holt on Libel*, 114, 115. The defendant was charged with publishing a libel upon the administration of the *Irish* government, and upon the public conduct and character of the lord lieutenant and lord chancellor of *Ireland*. Ld. *Ellenborough* C. J. in his address to the jury observed, "It is no new doctrine, that if a publication be calculated to alienate the affections of the people, by bringing the government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime. It has ever been considered as a crime, whether wrapt in one form or another. The case of the *King* v. *Tutchin, Holt*, 424. 14 *Howell's St. Tri.* 1095. *S. C.* decided in the time of Ld. C. J. *Holt*: has removed all ambiguity from this question; and, although at the period when that case was decided great political contentions existed, the matter was not again brought before the judges of the court by any application for a new trial. — "It has been observed, that it is the right of the *British* subject to exhibit the folly or imbecility of the members of the government. But we must confine ourselves within limits. If in so doing individual feelings are violated, there the line of interdiction begins, and the offence becomes the subject of penal visitation." The defendant was found guilty, but not called up for judgment, having redeemed himself by giving up the author of the libel, who was immediately prosecuted and convicted. See 7 *East, The King* v. *Johnson.*

The court will grant a criminal information for a libel upon a public body of men upon an affidavit, stating the publication of the libel by the defendant.

Rex v. *Williams, E.* 3 *G.* 4. 5 *B.* & *A.* 595. A rule *nisi* had been obtained for filing a criminal information against the defendant for an alleged libel upon the Clergy of the diocese of *Durham*. The publication stated, that upon the death of her late Majesty, none of the bells in the several churches at *Durham* were tolled. It ascribed this omission to the clergy, and then proceeded to make some very severe observations on that body. The rule was obtained upon affidavits, stating the purchase of the newspaper containing the libel, and that the defendant was the proprietor or publisher of the paper. On shewing cause, it was urged that the court would not grant a criminal information for a public libel, upon the application of an unknown private prosecutor, and without any affidavit of the charge being untrue. *Contra.* The court have, in many instances, granted informations for libels, on a number of individuals, without requiring any affidavit of the falsehood of the charge. In *Mich.* 13 *Geo.* 2. 1739, such

Rex v. Williams.

an information was granted against *M. Jenour*, the printer of the *Daily Advertiser*, for publishing a libel against the Directors of the *East India* company; and this application was supported by affidavits, stating the purchase of the newspaper, and an acknowledgment by the defendant that he had printed it. In *Hil. T.* 28 *Geo.* 2. 1755, a similar information was granted against *A. Alderton*, for writing and publishing a libel on the justices of the peace for the county of *Suffolk*, in an advertisement respecting the expenditure of money in the hands of the county treasurer. The only affidavit in support of the application was, that of the printer of the newspaper, that he had received the advertisement from the defendant for publication. So in *Hil. T.* 15 *Geo.* 3., such an information was granted against *R. Holloway* and *G. Allan*, for printing and publishing a libel upon the justices of the peace of the county of *Middlesex*, usually sitting by rotation in *Lichfield-street*, in a pamphlet entitled *The Rat-trap*, charging them with ignorance and corruption in the execution of their office. This rule was granted upon an affidavit, stating the purchase of the pamphlet from one of the defendants, and that the other acknowledged himself to be the author, and that several gentlemen named usually sat by rotation, as justices at a public office in *Lichfield-street*. It is clear, too, from *Rex* v. *Osborn*, 2 *Barnard.* 138. 166. 2 *Swanst.* 503. that the court will grant a criminal information for a libel reflecting on a public body. — R. A.

In an indictment for a libel, it must be alleged that the defendant published it, *of and concerning the particular person.*

Rex v. *Marsden, E.* 55 *G.* 3. 4 *M. & S.* 164. The defendant was convicted at *Essex Lent Assizes*, 1815, upon an indictment for a libel. — The indictment, which was for a libel against one *W. S.* a mayor and magistrate of a borough town, omitted to allege that the defendant published it "*of and concerning* W. S." The court of *K. B.*, on motion in arrest of judgment, held that this was an omission, not to be supplied by its being alleged in the *introductory part*, "that the defendant *intended to vilify* W. S., he having been mayor of, &c., and to cause it to be believed that *as such* mayor he had practised corruption, and been guilty of abuses in respect to granting a licence to one *J. L.* to retail beer, &c." and concluding, "*to the injury and disgrace of* W. S.," although the innuendos pointed the different parts of the libel immediately to *W. S.* and to *J. L.*, and to the granting the licences.

May be in writing or without.

Expressed either in printing or writing, signs or pictures.] A libel is either in writing, or without writing: In writing, when an epigram, rhyme, or other writing, is published to the contumely of another, by which his fame or dignity may be prejudiced: Without writing, may be by pictures, as to paint the party in any shameful and ignominious manner; or by signs, as to fix a gallows or other reproachful and ignominious signs at a man's door. 5 *Rep.* 125.

In *Rex* v. *Cobbett*, Ld. *Ellenborough* C. J. said "no man has a right to render the person or abilities of another ridiculous, not only in publications; but if the peace and welfare of individuals, or even of society, be interrupted, or even exposed by types and figures, the act, by the law of *England*, is a libel." *Holt on Libel*, 114, 115.

Mayor of *Northampton*'s case, 1 *Str.* 422. He sent Lord *Halifax* a licence to keep a public house, which the court said was

a libel in the case of a person of his quality, and they granted an information for it.

The memory of one that is dead.] For the offence is the same, whether the person libelled be alive or dead. 5 *Rep.* 125. **Persons libelled being dead.**

But this must be understood with some addition; otherwise it might reach historians, who in giving a history of the time are obliged to contrast the bad with the good. Therefore, in *Rex* v. *Topham*, 4 *T. R.* 126., where the defendant was convicted for publishing a libel reflecting on the memory of the late Earl *Cowper*, the court arrested the judgment; because it was not alleged in the indictment that it was done with a design to bring contempt on the family of the deceased, and to stir up the hatred of the king's subjects against them, and to excite his relations to a breach of the peace.

Although it is an aggravated misdemeanor to publish an invective against judges and juries, with a view to bring into suspicion and contempt the administration of justice in the country, still it is lawful with candour and decency to discuss the merits of the verdict of a jury, or the decisions of a judge. **Libels on juries, &c.**

Rex v. *White* and *Hart*, *London* sittings, after *E. T.* 48 *Geo.* 3. cor. *Grose* J. — 1 *Campb.* 359. This was an information filed by the attorney-general against the proprietor and printer of a *Sunday* newspaper, called *The Independent Whig*, for a libel upon Mr. Justice *Le Blanc* and the jury before whom the captain of a merchant ship had been tried for murder at the *Old Bailey*. The libel affirmed the prisoner to have been guilty of murdering one of his crew, and in a gross and abusive style censured the judge and jury for acquitting him. It was contended on the part of the defendants, that every one has a right to canvass the proceedings of courts of justice, and that the article complained of was a fair exercise of that right. — *Grose* J. said, it certainly was lawful with decency and candour, to discuss the propriety of the verdict of a jury, or the decisions of a judge; and if the defendants should be thought to have done no more in this instance, they would be entitled to an acquittal; but, on the contrary, they had transgressed the law, and ought to be convicted, if the extracts from the newspaper set out in the information contained no reasoning or discussion, but only declamation and invective, and were written not with a view to elucidate the truth, but to injure the characters of individuals, and to bring into hatred and contempt the administration of justice in the country. The defendants were found guilty on this and a similar information, and sentenced to three years' imprisonment.

Rex v. *Mary Carlile*, *M.* 60 *G.* 3. 3 *B.* & *A.* 167. It is not lawful to publish even a correct account of the proceedings in a court of justice, if such an account contain matter of a scandalous, blasphemous, or indecent nature.

In an action for a libel, which professed to be a narrative of proceedings in the insolvent court, beginning "*Shameful conduct of an Attorney*," and proceeding with the detail of the speeches, examinations and observations of the court; defendant pleaded that the alleged libel was a correct account, and a verdict was found for him: but the court of K. B. afterwards held, that the pleas were bad, the narrator not having confined himself to what actually passed in court, but prefaced the statement with the

words "*Shameful conduct,*" &c. which were a direct allegation against the plaintiff; and gave judgment for the plaintiff, notwithstanding the verdict. *Lewis* v. *Clement*, 3 *B. & A.* 702. See also 3 *Brod. & Bing.* 297. *S. C.*

§ II. Who are punishable for it.

Composer, procurer, and publisher.

It is certain that not only he who composes a libel, or procures another to compose it, but also he who publishes or procures another to publish it, is in danger of being punished for it; and it is said not to be material, whether he who disperses a libel know any thing of the contents or effect of it or not; for nothing would be more easy than to publish the most virulent papers with the greatest security, if concealing the purport of them from an illiterate publisher would make him safe in dispersing them. 1 *Haw. c.* 73. § 10.

Also it hath been said, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. 1 *Haw. c.* 73. § 10.

Copying a libel.

Also it hath been holden that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove that he delivered it to a magistrate to examine it. 1 *Haw. c.* 73. § 10.

Finding a libel on a bookseller's shelf.

And it hath been ruled that the finding a libel on a bookseller's shelf is a publication of it by the bookseller; and that it is no excuse to say that the servant took it into the shop without the master's knowledge; for the law presumes the master to be acquainted with what the servant does. *Rex* v. *Dodd*, 1 *Sess. Cas.* 33.

Writing a libel dictated by another.

It seems to be the better opinion, that he who first writes a libel dictated by another is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel till it was reduced to writing; for the essence of a libel consisteth in the writing of it; if a man speak such words, unless the words be put in writing, it is not a libel. 2 *Salk.* 419. 1 *Haw. c.* 73. § 10.

Sending a provoking letter.

Also it hath been resolved that the sending of a letter full of provoking language to another, without publishing it, is highly punishable, as manifestly tending to a disturbance of the peace. 1 *Haw. c.* 73. § 11.

But it hath been resolved that he who barely reads a libel in the presence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. But the having in one's custody a written copy of a libel, publicly known, is an evidence of the publication of it. 1 *Haw. c.* 73. § 13.

Caricature.

A person who having a copy of a libellous caricature shews it to another on being requested so to do, is not thereby liable to an action for maliciouly publishing it. *Smith* v. *Wood*, *Sitt. after H. T.* 53 *G.* 3. 3 *Campb.* 323.

§ III. How punishable.

What is the punishment.

There seemeth to be no doubt but that the offenders may be condemned to pay such fine, and also to suffer such corporal

punishment, as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender. 1 *Haw. c.* 73. § 16.

And it hath been adjudged that libels having a direct and immediate tendency to a breach of the peace, are indictable before justices of the peace. 2 *Haw. c.* 8. § 38. May be indicted before justices of peace.

And in the case of *Rex* v. *Rispal*, 1 *Blac. Rep.* 368. Ld. *Mansfield* C. J. expressly said, that libels were within the jurisdiction of a court of quarter sessions.

On an indictment setting forth the offence, *according to the tenor and to the effect following*, it was agreed by the court, that *to the effect following* hath been naught, being vague and useless words; for the court must judge of the words themselves; but the words, *according to the tenor*, do correct the defect; for they import the very words themselves, for the *tenor* of a thing is the transcript and true copy of it, to which it may be compared: and therefore of words spoken there can be no tenor, because there is no written original. 2 *Salk.* 417. 3 *Salk.* 225.

It must be proved to be written or published in the county laid in the indictment; all matters of crime being local. *Read*, Lib. See the trial of the Seven Bishops, 12 *Howell's St. Tri.* 183. 315.

An information for a libel need not charge the offence to have been committed *vi et armis*, or allege that the libellous matter is false. 7 *T. R.* 4.

The chief cause for which the law so severely punishes all offences of this nature, is the direct tendency of them to a breach of the public peace, by provoking the parties injured, and their friends and families, to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most sensibly felt.

A great alteration took place a few years ago in the trials for libels. It had been held in many cases, that the facts of writing, printing, or publishing, and the truth of the innuendoes inserted in the proceedings, were the only matters to be submitted to the consideration of the jury; but by stat. 32 *G.* 3. *c.* 60. § 1., after reciting that doubts had arisen "*whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the king and the defendant or defendants on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same to give their verdict upon the whole matter in issue; it is therefore declared and enacted, that on every such trial the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information; and shall not be required or directed by the court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information.*" Of the power of a jury in cases of libel. 32 G. 3. c. 60.

§ 2 "*Provided always, that, on every such trial, the court or judge before whom such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the king*

32 G.3. c.60. *and the defendant or defendants, in like manner as in other criminal cases.*"

§ 3. "*Provided also, that nothing herein contained shall extend or be construed to extend to prevent the jury from finding a special verdict, in their discretion, as in other criminal cases.*"

§ 4. "*Provided also, that in case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgment, on such ground, and in such manner as by law he or they might have done before the passing of this act.*"

Delivering a libel sealed, that it may be opened and published by a third person in a distant county, is a publication.

Rex v. *Sir F. Burdett, bart. M.* 1 *G.* 4. 4 *B.* & *A.* 95. Information in the county of *Leicester* for writing and publishing a libel. Proof that defendant wrote it in the county of *Leicester*, and that *Bickersteth* delivered it to *Brookes* for publication in *Middlesex* unsealed. *Bickersteth* was not called at the trial, nor was there any evidence of his being in the county of *Leicester*, or how the libel came to him; the jury were told, as he had it open they might presume he received it open; and as defendant wrote it in *Leicestershire*, it might be presumed he received it in *Leicestershire:* the jury found accordingly for the crown. On R. N. for a new trial and cause shewn, three judges (*Bayley* J. *dissentiente*) held the direction justifiable; and they also held, that if delivery open could not be presumed, delivery sealed, with a view to, and for the purpose of publication, was a publication; and they thought there was sufficient ground for presuming some delivery, whether open or sealed, in *Leicestershire.*—R. D.

If a libel imputes to a man a triable offence, proof of the truth is inadmissible; for it would be trying the question behind a man's back, and creating a prejudice against him. *Per totam curiam. S. C.*

A libel imputing murder to certain soldiers. Evidence offered of the truth, but rejected; and the court unanimously held that it was rightly rejected; for the persons charged might afterwards come to be tried, and the previous inquiry might prejudice them. *S. C.*

The intention may be collected from the libel, unless the mode of publication or other circumstances explain it. *S. C.*

The publisher must be presumed to intend what the publication is likely to produce. *S. C.*

So that if it is likely to excite sedition, he must be presumed to intend that it should. *S. C.*

The judge may tell the jury that they are to take the law from him, unless they are satisfied he is wrong. *S. C.*

If a man writes a libel in the county of *L.*, with intent to publish it in the county of *M.*, and publishes it accordingly in *M.*, he may be indicted in *L.* or in *M.* *S. C.*

Defendant wrote a libel in *Leicestershire* with intent to publish it in *Middlesex*, and published it in *Middlesex* accordingly. Information in *Leicestershire:* and on question, whether the information in *Leicestershire* was right, three judges (*Bayley* J. *dubitante*) held it was. *S. C.*

If a libel is charged to be of and concerning the government of the

Rex v. *Sir F. Burdett, bart. H.* 1 & 2 *G.* 4 4 *B.* & *A.* 314. An information stated that the defendant, intending to excite hatred against the government of this realm, and to cause it to be believed that divers subjects had been inhumanly killed by certain

troops of the king, published a libel of and concerning the government of this realm, and of and concerning the said troops: The libel stated, that he saw with astonishment in the newspapers the accounts of a transaction at *Manchester*, and alleged that unarmed and unresisting men had been inhumanly cut down by the dragoons (meaning the said troops), and then commented strongly upon this being the use of a standing army, and called upon the people to demand justice, &c.: it did not in terms say, that the dragoons acted under the authority or order of government; and, after conviction, motion in arrest of judgment, on the ground that it did not sufficiently appear that it was written of and concerning the government, nor of and concerning what troops it was written; but the court held it was obvious, from its whole tenor and import, that it meant to cast imputation upon the government;—that it was a libel to impute crime to any of the king's troops, though it did not define what troops in particular were referred to, and that the innuendo of the "said troops" meant the undefined part of those troops; and sentence was passed.

R. v. Burdett.

kingdom, though it do not in express terms impute to the government any of the facts it mentions, the court is to judge from its whole tenor and import, understanding it as other men would understand it, whether it does not mean to cast that imputation.

§ IV. Power of Justices of the Peace.

On a case officially referred to the attorney and solicitor general, by the secretary of state for the home department, in the year 1817, the following opinion was promulgated by authority:—

"We are of opinion that a warrant may be issued to apprehend a party charged on oath for publishing a libel, either by the secretary of state, a judge, or a justice of the peace.

"With respect to the secretary of state in the case of *Entick* v. *Carrington*, as reported by Mr. *Hargrave*, though the court were of opinion the warrants which were then the subject of discussion were illegal, yet Ld. *Camden* declared, and in which he stated the other judges agreed with him, that they were bound to adhere to the determination of the *Queen* v. *Derby*, and the *King* v. *Earbury*, in both of which cases it had been holden, that it was competent to the secretary of state to issue a warrant for the apprehension of a person charged with a scandalous and seditious libel, and that they, the judges, had no right to overturn those decisions.

See Hansard's Parliamentary Debates, vol. xxxvi. p. 449. (n). See also 19 Howell's St. Tri. 1029.

Fort. 140. Fort. 37. 8 Mod. 177.

"With respect to the power of a judge to issue such warrant, it appears to us that at all events, under the statute of 48 *G*. 3. *c*. 38., a judge has such power, upon an affidavit being made in pursuance of that act. A judge would probably expect that it should appear to be the intention of the attorney-general to file an information against the person charged.

"With respect to a justice of the peace, the decision of the court of Common Pleas, in the case of Mr. *Wilkes*'s libels, only amounts to this,—that libel is not such an actual breach of the peace, as to deprive a member of parliament of his privilege of parliament, or to warrant the demanding sureties of the peace from the defendant; but there is no decision or opinion that a justice of the peace might not apprehend any person not so privileged, and demand bail to be given to answer the charge. It has certainly been the opinion of one of our most learned predecessors, that such warrants may be issued and acted upon by justices of the peace, as appears by the cases of *Thomas Spence* and *Alexander*

19 Howell's St. Tri. 1075.

Hogg, in the year 1801. We agree in that opinion, and therefore think that a justice of the peace may issue a warrant to apprehend a person charged by information on oath with the publication of a scandalous and seditious libel, and to compel him to give bail to answer such charge.

"Lincoln's Inn, "W. GARROW.
"Feb. 24th, 1817. "S. SHEPHERD."

This opinion was fully discussed in the House of Lords on the 12th *May*, 1817, when the Lord Chancellor (*Eldon*) and Ld. *Ellenborough* C. J. of the K. B. delivered their opinions that justices of the peace had power to hold to bail in cases of libel; and in *Butt* v. *Conant* (*a*) 1 *Brod. & Bing.* 548. it was expressly decided, after much consideration and a view of all the adjudged cases and authorities, that a justice of the peace has authority to issue his warrant for the arrest of a party charged with having published a libel; and upon the neglect of the party so arrested to find sureties, may commit him to prison, there to remain till he be delivered by due course of law. See also 4 *Blac. Com.* 150.

The publishers and distributors of impious and seditious libels may be instantly taken up and held to bail. It is not necessary to stand by and see the mischief spreading, without attempting to interrupt its progress; it would be a reproach to the laws of the country if it were so, and if the magistrates might not arrest the torch in the incendiary's hand, before it has actually set fire to the building. *Per Leycester J. in his charge to the grand jury at Carnarvon, Sum. Ass.* 1819.

§ V. Prevention and Punishment of Blasphemous and Seditious Libels.

A blasphemous libel may be prosecuted as an offence at common law. *Rex* v. *Carlile*, 3 *B. & A.* 161.

60 G. 3. c. 8.

Court to make order for the seizure of copies of the libel in possession of the persons against whom verdicts shall have been had, &c.

By stat 60 *G.* 3. *c.* 8. § 1. After reciting that whereas it is expedient to make more effectual provision for the punishment of blasphemous and seditious libels; it is enacted, "That from and after the passing of this act, [30th *December*, 1819,] in every case in which any verdict or judgment by default shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel, tending to bring into hatred or contempt the person of H. M., his heirs or successors, or the regent, or the government and constitution of the U. K. as by law established, or either house of parliament, or to excite H. M.'s

(*a*) The warrant, in this case, dated 6th *March* 1817, at the public office *Bow-street*, was directed, "To all constables and others H. M.'s officers of the peace, whom it may concern," commanding them to take and bring before the defendant or some other of H. M.'s justices of the peace the body of the plaintiff, "to answer all such matters or things as, on H. M.'s behalf, shall on oath be objected against him, for that he on the 5th *March* instant did publish and cause to be published a certain wicked, scandalous, and malicious libel, imputing the crime of robbery to *Edward* Lord *Ellenborough* Lord C. J. of H. M.'s court of K. B.: and another wicked, scandalous, and malicious libel imputing to *Robert Henry* Lord *Castlereagh*, that he had stated a gross falsehood to the House of Commons, to answer his own purposes; and to the said *Edward* Lord *Ellenborough* that he had unjustly convicted the plaintiff to make money of him, against the peace, &c."

subjects to attempt the alteration of any matter in church or state as by law established, otherwise than by lawful means, it shall be lawful for the judge, or the court before whom or in which such verdict shall have been given, or the court in which such judgment by default shall be had, to make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use; evidence upon oath having been previously given to the satisfaction of such court or judge, that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace, or for any constable or other peace officer acting under any such order, or for any person or persons acting with or in aid of any such justice of the peace, constable or other peace officer, to search for any copies of such libel in any house, building, or other place whatsoever belonging to the person against whom any such verdict or judgment shall have been had, or to any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody until the same shall be restored under the provisions of this act, or disposed of according to any further order made in relation thereto." 60 G.3. c.8.

Copies of libels so seized to be restored if judgment for defendant; otherwise to be disposed of as court shall direct.

§ 2. Enacts, "That if in any such case as aforesaid judgment shall be arrested, or if, after judgment shall have been entered, the same shall be reversed upon any writ of error, all copies so seized shall be forthwith returned to the person or persons from whom the same shall have been so taken as aforesaid, free of all charge and expence, and without the payment of any fees whatever; and in every case in which final judgment shall be entered upon the verdict so found against the person or persons charged with having composed, printed, or published such libel, then all copies so seized shall be disposed of as the court in which such judgment shall be given shall order and direct.

Court of justiciary in Scotland to make order for seizing copies of libels, &c.

§ 3. Provides, "That in *Scotland*, in every case in which any person or persons shall be found guilty before the Court of Justiciary, of composing, printing, or publishing any blasphemous or seditious libel, or where sentence of fugitation shall have been pronouced against any person or persons, in consequence of their failing to appear to answer to any indictment charging them with having composed, printed, or published any such libel, then and in either of such cases, it shall and may be lawful for the said court to make an order for the seizure, carrying away, and detaining in safe custody all copies of the libel in the possession of any such person or persons, or in the possession of any other person or persons named in such order, for his or their use, evidence upon oath having been previously given to the satisfaction of such court or judge, that a copy or copies of the said libel

60 G.3. c.8. is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and every such order so made shall and may be carried into effect, in such and the same manner as any order made by the court of justiciary, or any circuit court of justiciary, may be carried into effect according to the law and practice of *Scotland:* provided always, that in the event of any person or persons being reponed against any such sentence of fugitation, and being thereafter acquitted, all copies so seized shall be forthwith returned to the person or persons from whom the same shall have been so taken as aforesaid; and in all other cases, the copies so seized shall be disposed of in such manner as the said court may direct."

Punishment of persons convicted of second offence.

§ 4. Enacts, "That if any person shall, after the passing of this act, be legally convicted of having, after the passing of this act, composed, printed, or published any blasphemous libel, or any such seditious libel as aforesaid, and shall, after being so convicted, offend a second time, and be thereof legally convicted before any commission of oyer and terminer or gaol delivery, or in H. M.'s court of K. B., such person may, on such second conviction, be adjudged, at the discretion of the court, either to suffer such punishment as may now by law be inflicted in cases of high misdemeanors, or to be banished from the U. K. and all other parts of H. M.'s dominions, for such term of years as the court in which such conviction shall take place shall order."

Persons not departing within thirty days after sentence of banishment may be conveyed out of H. M.'s dominions.

§ 5. Enacts, "That in case any person so sentenced and ordered to be banished as aforesaid, shall not depart from this U. K. within thirty days after the pronouncing of such sentence and order as aforesaid, for the purpose of going into such banishment as aforesaid, it shall and may be lawful to and for H. M. to convey such person to such parts out of the dominions of his said majesty as H. M., by and with the advice of his privy council, shall direct."

Persons banished found at large within H. M.'s dominions to suffer transportation.

§ 6. Enacts, "That if any offender who shall be so ordered by any such court as aforesaid to be banished in manner aforesaid, shall, after the end of forty days from the time such sentence and order hath been pronounced, be at large within any part of the U. K. or any other part of H. M.'s dominions, without some lawful cause, before the expiration of the term for which such offender shall have been so ordered to be banished as aforesaid, every such offender being so at large as aforesaid, being thereof lawfully convicted, shall be transported to such place as shall be appointed by H. M., for any term not exceeding fourteen years; and such offender may be tried, either before any justices of assize, oyer and terminer, great sessions, or gaol delivery, for the county, city, liberty, borough, or place where such offender shall be apprehended and taken, or where he or she was sentenced to banishment; and the clerk of assize, clerk of the peace, or other clerk or officer of the court, having the custody of the records where such order of banishment shall have been made, shall, when thereunto required on H. M.'s behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, and of the order for his or her banishment, to the justices of assize, oyer and terminer, great ses-

sions, or gaol delivery, where such offender shall be indicted, for which certificate 6*s*. 8*d*. and no more shall be paid, and which certificate shall be sufficient proof of the conviction and order for banishment of any such offender." 60 G.3. c.8.

Certificate to be given of conviction of former libel.

§ 7. Enacts, "That the clerk of assize, clerk of the peace, or other clerk or officer of the court having the custody of the records where any offender shall have been convicted of having composed, printed, or published any blasphemous or seditious libel, shall, upon request of the prosecutor on H. M.'s behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, to the justices of assize, oyer and terminer, great sessions, or gaol delivery, where such offender or offenders shall be indicted for any second offence of composing, printing, or publishing any blasphemous or seditious libel, for which certificate 6*s*. 8*d*. and no more shall be paid, and which certificate shall be sufficient proof of the conviction of such offender."

Limitation of actions.

§ 8. Enacts, "That any action and suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, within that part of *G. B.* called *England*, or in *Ireland*, for any thing done or acted in pursuance of this act, shall be commenced within six calendar months next after the fact committed, and not afterwards; and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if such action or suit shall be brought or commenced after the time limited for bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and in such case, or if the jury shall find a verdict for the defendant or defendants upon the merits, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their actions after appearance, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs, which he or they shall and may recover in such and the same manner as any defendant can by law in other cases."

General issue may be pleaded

Double costs.

Limitation of actions, &c. in Scotland.

§ 9. Enacts, "That every action and suit which shall be brought or commenced against any peron or persons in *Scotland*, for any thing done or acted in pursuance of this act, shall in like manner be commenced within six calendar months after the fact committed, and not afterwards, and shall be brought in the court of session in *Scotland*, and the defender or defenders may plead that the matter complained of was done in pursuance of this act, and may give this act and the special matter in evidence; and if such action or suit shall be brought or commenced after the time limited for bringing the same, then the same shall be dismissed; and in such case, or if the defender or defenders shall be assoilzied, or the pursuer or pursuers shall suffer the action or suit to fall asleep, or a decision shall be pronounced against the pursuer or pursuers upon the relevancy, the defender or defenders shall have double costs, which he or they shall and may receive in such and

Double costs.

60 G. 3. c. 8. the same manner as any defender can by law recover costs or expences in other cases."

Not to alter the law of Scotland in respect to punishment for libels. § 10. Provides, "That nothing in this act contained shall be held or considered as in any respect altering the law or practice of *Scotland* regarding the punishment of persons convicted of composing, printing, publishing, or circulating any blasphemous or seditious libel."

Indictment for a Seditious Libel.

THE jurors for our lord the king upon their oath present, That A. O. *late of* ——— *in the county of* ——— *gentleman, not having God before his eyes, but moved by the instigation of the devil, and falsely and maliciously contriving and intending to bring our said lord the king into hatred and infamy amongst his subjects, and to move sedition amongst the subjects of our said lord the king, did on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *aforesaid in the county aforesaid, falsely, seditiously, and maliciously write and publish, and cause to be written and published, a certain false, seditious, and scandalous libel, intitled* ———. *In which said libel are contained, among other things, divers false, seditious, scandalous, and malicious matters, according to the tenor following, to wit,* ———. *And in another part of the same libel are contained divers other false, seditious, scandalous, and malicious matters, according to the tenor following* ———, *to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

Linen Cloth.

[1 Eliz. c. 12.—15 C. 2. c. 15.—17 G. 2. c. 30.—4 G. 3. c. 37.—7 G. 3. c. 43.—27 G. 3. c. 13.—c. 32.—51 G. 3. c. 41.—52 G. 3. c. 143.—4 G. 4. c. 46.]

FOR the duties on linen cloth printed or stained, see title Excise, Vol. II. p. 192.

For journeymen and other workmen embezzling the materials of the linen manufacture, see title Servants, Vol. V.

15 C. 2. c. 15, Who may set up trades in the linen manufacture. By stat. 15 *C.* 2. *c.* 15. § 2. Any person, native or foreigner, may, without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, set up and exercise the occupation of breaking, hickling, or dressing of hemp or flax; as also of making or whitening of thread; as also of spinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as also the mystery of making twine or nets for fishery, or of stoving of cordage; as also the trade of make tapestry hangings.

Foreigners. § 3. And all foreigners that shall use any the trades aforesaid three years, shall (taking the oaths of allegiance and supremacy

before two justices near unto their dwellings) enjoy all privileges as natural born subjects.

Deceitful making of linen cloth.

By stat. 1 *Eliz.* c. 12. § 1. Whereas certain evil-disposed persons, by sundry devices, stretch linen cloth both in length and breadth, and then with battledores or otherwise beat the same, casting thereupon certain deceitful liquors mingled with chalk, and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby loosened and made weak; if any person shall hereafter use the said deceits, or do any other act with any linen cloth whereby it shall be made worse, the said cloth shall be forfeited, and the offender punished by one month's imprisonment at the least, and pay such fine as the justices shall assess.

What justices may determine offences.

§ 2. And the judges of assize, and justices of the peace or three of them (1 *Q.*), may hear and determine the same in their sessions, by information, indictment,, or upon the traverse of any presentment or indictment found before them. See title Traverse, Vol. V.

How informer shall pursue his suit.

§ 3. If any person shall seize any such deceitful linen cloth, he shall, at the next sessions or before two justices (1 *Q.*), make due information of the offence and of the seizure, or else shall procure the offender to be indicted at the next sessions, and shall also be bound by recognizance or obligation to pursue the same with effect, and to give evidence, and to pay the moiety of what he shall recover to the sheriff or other accountant to the use of the king, and the other half shall go to the informer or prosecutor.

Certificate of estreat into exchequer.

§ 4. The justices before whom the offence shall be tried shall certify the same by estreat into the exchequer yearly at *Michaelmas*, as they do other estreats; and thereupon the barons may make process for so much thereof as appertaineth to the king, in like manner as for other fines.

51 G. 3. c. 41. Any person stealing any linen, &c. exposed to be printed, or bleached, &c. to the value of ten shillings, or aiding, counselling, &c. or knowingly receiving goods so stolen, may be transported for life or for not less than seven years, or imprisoned for any term not exceeding seven years.

Stat. 51 *G.* 3. *c.* 41. repeals the first section of stat 18 *G.* 2. *c.* 27. (which excluded from clergy offenders stealing linen, &c. to the value of ten shillings, from bleaching places) and in lieu thereof enacts, "That every person who shall feloniously steal any linen, fustian, calico, cotton cloth, or cloth worked, woven, or made of any cotton or linen yarn mixed, or any thread, linen, or cotton yarn, linen or cotton tape, incle, filletting, laces, or any other linen, fustian, or cotton goods or wares whatsoever, laid, placed, or exposed to be printed, whitened, bowked, bleached, or dried in any whitening or bleaching croft, lands, fields, or grounds, bowking-house, drying-house, printing-house, or other building, ground, or place made use of by any calico-printer, whitster, crofter, bowker, or bleacher, for printing, whitening, bowking, bleaching, or drying of the same, to the value of ten shillings; or who shall aid or assist, or wilfully or maliciously hire or procure any other person or persons to commit any such offence, or who shall buy or receive any such goods or wares so stolen, knowing the same to be stolen as aforesaid, being lawfully convicted thereof, shall be liable to be transported beyond the seas for life, or for such term, not less than seven years, as the judge before whom any such person shall be convicted shall adjudge; or shall be liable, in case the said judge shall think fit, to be imprisoned and kept to hard labour in the common gaol, house of

correction, or penitentiary house, for any term not exceeding seven years.

Hugill's case.

In a case where the prisoner was indicted upon a similar clause of the repealed statute 18 *G.* 2. *c.* 27. for stealing yarn out of a bleaching ground; and the evidence was that the yarn had been spread upon the ground, but was afterwards taken up and thrown into heaps, in order to be carried into the house, in which state some of it was stolen by the prisoner; *Thomson* B. held that the case did not come within the statute, as there was no occasion to leave the yarn upon the ground in the state in which it was taken by the prisoner. *Hugill's case, cor. Thomson* B. *at York.* 4 *Blac. Com.* 240. (*n*). 2 *Russ.* 1293.

4 G.4. c.46. Punishing persons by transportation or imprisonment, at discretion of the court, for destroying woollen, silk, linen, or cotton goods, &c. in the loom, &c.

By stat. 4 *G.* 4. *c.* 46. § 2. after reciting stats. 4 *G.* 3. *c.* 37. and 22 *G.* 3. *c.* 40. it is enacted, That so much of the said acts as creates felonies in stealing, damaging, or destroying manufactures, implements, or machinery, shall be and the same are hereby repealed, save only as to offences committed before the passing of this act, as to which the said recited acts shall continue in force; and that from and after the passing of this act, *viz.* (4th *July* 1823,) "if any person shall by day or by night break into any house, shop, or building, or enter by force into any house, shop, or building, with intent to cut, break, destroy, or damage, in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, any woollen, silk, linen or cotton goods, or any goods of any one or more of those materials mixed with each other, or mixed with any other material; or to cut, break, destroy, or damage any other article of the woollen, silk, linen, or cotton manufactures in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; or to cut, break, destroy, or damage any warp or shute of woollen, silk, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace; or to burn, break, cut, destroy, or damage any loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles; or shall wilfully and maliciously, and without lawful authority, cut, break, destroy, or damage any such woollen, silk, linen, cotton or mixed goods, or articles, in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; or burn, break, cut, destroy, or damage any such loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement as aforesaid; or counsel, procure, aid, or abet the commission of the said offences, or of any of them; every person so offending, being thereof lawfully convicted, shall be guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years."

17 G.2. c.30.

By stat. 17 *G.* 2. *c.* 30. § 1. If any person shall cause any stamps to be affixed to any foreign linens imported, in imitation of the

stamps put on *Scotch* or *Irish* linens, he shall forfeit *5l.* for each piece; or if any person shall sell, expose to sale, or pack up for sale any foreign linens (knowing them to be so stamped) as the manufacture of *Scotland* or *Ireland*, he shall forfeit the same, and also *5l.* for each piece. And if any person shall affix any counterfeit stamp on any linen of the manufacture of *G. B.* or *Ireland*, in order to vend the same as linens duly stamped, he shall forfeit *5l.* for each piece: and if any person shall sell, expose to sale, or pack up for sale any such linens, knowing them to be so stamped, he shall forfeit the same, and also *5l.* for each piece. 17 G. 2. c. 30. Affixing counterfeit stamps on linen cloth.

§ 2. *And one justice may convict the offender on the oath of one witness, and may grant his warrant for distress and sale, rendering the overplus, if any there be; and for want of sufficient distress, any justice, on proof thereof made on oath by the person executing the warrant, may commit him to gaol for six months, unless it be paid sooner; which penalty and forfeiture shall go to the informer, deducting *2s.* in the pound to be paid to the constable who shall execute the warrant.

By stats. 27 *G.* 3. *c.* 13. § 23. 27 *G.* 3. *c.* 32. § 19. *Cambricks*, or *French lawns*, legally imported, may be worn or sold, and no person shall prosecuted for having the same in his possession. Cambricks or French lawns may be worn or sold.

By stats. 4 *G.* 3. *c.* 37. and 7 *G.* 3. *c.* 43. There are divers regulations concerning the making and stamping cambricks and lawns made in *England;* and if any person shall forge and counterfeit such stamp, he shall be guilty of felony without benefit of clergy. Cambricks and lawns made in England.

But by stat. 52 *G.* 3. *c.* 143. This offence is declared to be felony only with benefit of clergy. See *the Report from a Select Committee of the House of Commons on the Criminal Laws, dated* 8th *July* 1819, *page* 57.

Ling, Burning of it. See **Burning**, Vol. I.

London.

THERE are many acts of parliament relating to the city of *London* and other places within the bills of mortality, which being only local are not within the compass of this work, and which would require a distinct volume of themselves. Sir *John Fielding*, in his "Extract of the penal Laws relating to the Peace "and good Order of the City of *London*," hath collected these partly amongst other more general laws, for the instruction of ignorant offenders, and admonition of the unwary. It would be a work of further service to the metropolis, if some person would complete a collection and digest of all the laws relating to the cities of *London* and *Westminster*, and other places within the bills; out of which might be selected again such only as concern the office of a justice of the peace in particular.

By stat. 51 *G.* 3. *c.* 119. Several provisions were enacted, repealing the 42 *G.* 3. *c.* 76. and the act continuing it, and pro- 51 G. 3. c. 119.

viding for the more effectual administration of the office of a justice in those parts of *Middlesex* and *Surrey*.

Stat 52 *G*. 3. *c*. 44. relates to the erection of a *penitentiary-house*, within *London* and *Middlesex*.

See title Police of the Metropolis, post.

Lord's Day.

[27 H. 6. c. 5. — 1 El. c. 2. — 3 J. c. 4. — 1 C. c. 1. — 3 C. c. 1. — 29 C. 2. c. 7. — 10 & 11 W. c. 24. — 11 & 12 W. c. 21. — 9 Ann. c. 23. — 2 G. 3. c. 15. — 13 G. 3. c. 80. — 21 G. 3. c. 49. — 50 G. 3. c. 73. — 1 & 2 G. 4. c. 50. — 3 G. 4. c. 106.

1 Eliz. c. 2. Resorting to church on the Lord's day.

3 J. c. 4.

BY stat. 1 *Eliz. c.* 2. § 14. 24. All persons, not having a lawful or reasonable excuse, shall endeavour themselves to resort to their parish church or chapel (or to some congregation of religious worship allowed by the toleration act,) on every *Sunday;* on pain of punishment by the censures of the church, and also of forfeiting 1*s*. to the poor for every offence. To be levied by the churchwardens by distress, by warrant of one justice; and in default thereof commitment till payment: the prosecution to be in one month.

Profanation of the Lord's day, vulgarly (but improperly) called *Sabbath breaking*, is an offence against God and religion, punished by the municipal law of *England*. For besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing Christianity, and the corruption of morals which usually follows its profanation, the keeping one day in seven holy as a time of relaxation and refreshment, as well as for public worship, is of admirable service to a state, considered merely as a civil institution. It humanises by the help of conversation and society the manners of the lower classes, which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit: it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness: it imprints on the minds of the people that sense of their duty to God, so necessary to make them good citizens; but which yet would be worn out and defaced by an unremitted continuance of labour, without any stated times of recalling them to the worship of their maker. 4 *Blac. Com.* 63.

27 H. 6. c. 5. Fairs, &c. on feast days, or Sundays.

By stat. 27 *H*. 6. *c*. 5. § 1. All fairs and markets upon feast days or on *Sundays* (the four *Sundays* in harvest excepted) shall clearly cease, on pain of forfeiture of the goods exposed to sale: and fairs holden theretofore on solemn festivals, shall thereafter be holden three days before or three days after such festivals.

Sports on the Lord's day.

King *James* I. in 1618, publicly declared to his subjects, in what was called *The Book of Sports*, these games following to be *lawful*, *viz.* dancing, archery, leaping, vaulting, Maygames, Whitsun-ales, and morris dances; and did command that no such honest mirth or recreation should be forbidden to his subjects on *Sunday* after evening service: But restraining all recusants from

this liberty; and commanding each parish to use these recreations by itself; and prohibiting all *unlawful* games, bear-baiting, bull-baiting, interludes, and bowling, by the meaner sort. *Dalt. c.* 46.

After which it was enacted, by stat. 1 *C.* 1. *c.* 1. That there shall be no concourse of people *out of their own parishes* on the Lord's day *for any sport or pastimes; nor any* bear-baiting, bull-baiting, interludes, common plays, or other *unlawful* exercises and pastimes used by any persons *within their own parishes;* on pain that every offender, being convicted within a month after the offence, before one justice, or chief officer of any city, borough, or town corporate, on view, or confession, or oath, of one witness, shall forfeit, for every offence, 3*s.* 4*d.* to the poor, to be levied by the constable and churchwardens by distress; in default of distress, the party to be set publicly in the stocks for three hours. 1 C. 1. c. 1.

By stat. 21 *G.* 3. *c.* 49. Within *London* or *Westminster*, or in the neighbourhood thereof, any house, room, or other place which shall be open upon the Lord's day for public entertainment or amusement, or for publicly debating on (religious or) any subject whatever, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper thereof shall forfeit 200*l.* for every day that it shall be so opened, &c.; the person managing or conducting the entertainment, or acting as master of the ceremonies there, or as president, chairman, or moderator, 100*l.*; and every door-keeper, or servant, or other persons, who shall collect money or tickets, or deliver out tickets, 50*l.* to him who shall sue. 21 G. 3. c. 49. Places of entertainment on the Lord's day.

By stat. 3 *C.* 1. *c.* 1. No *carrier* with any horse or horses, nor waggonmen with any waggon or waggons, nor carmen with any cart or carts, nor wainmen with any wain or wains, nor *drovers* with any cattle, shall, by themselves or any other, travel on the Lord's day, on pain of 20*s.* (A); or if any *butcher*, by himself, or any other for him with his privity and consent, shall kill or sell any victual on the Lord's day, he shall forfeit 6*s.* 8*d.* The conviction to be in six months before one justice, or mayor, or other head officer of any city or town corporate, on view, or confession, or oath of two witnesses; to be levied by the constable or churchwarden by distress and sale; or to be recovered in any court of record, in any city or town corporate, before the justices in sessions, to be applied to the use of the poor, except that the justice, mayor, or head officer, out of the said forfeitures, may reward the informer or prosecutor with part of the forfeiture, not exceeding one third part. 3 C. 1. c. 1 Carrier, drover, butcher, &c. (A.)

But selling meat on *Sundays* is no offence at common law, and therefore an indictment on stat. 3 *C.* 1. for that offence must conclude "against the form of the statute." *Rex* v. *Brotherton*, 2 *Str.* 702. See also 1 *Saund.* 249. *S. P.*

By stat 29 *C.* 2. *c.* 7. It is further enacted, that no *drover*, *horse-courser*, *waggoner*, *butcher*, *higler*, or any of their servants, shall travel or come into his inn or lodging on the Lord's day, or any part thereof, on pain of 20*s.*; and in general, that no *tradesman, artificer, workman, labourer, or other person*, shall do or exercise any worldly labour, business, or work of their ordinary callings 29 C. 2. c. 7. Drover, horse-courser, waggoner, butcher, or higler travelling.

29 C. 2. c. 7.

Tradesmen exercising their callings.

on the Lord's day, (except works of necessity and charity, and except dressing of meat in families, or dressing or selling of meat at inns, cooks' shops, or victualling houses, for such as cannot otherwise be provided; and by the 9 *Ann. c.* 23. § 20. except licensed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender above fourteen years of age forfeiting 5*s.*; and also that no person shall publicly *cry, shew forth, or expose to sale*, any wares, merchandises, fruit, herbs, goods, or chattels whatsoever on the Lord's day, (except crying and selling of milk before nine in the morning and after four in the afternoon, and except mackarel, which may be sold on *Sundays* before or after divine service, by stat. 10 & 11 *W. c.* 24. § 14.) on pain of forfeiting the same; and also that no person shall use, employ, or travel on the Lord's day with any *boat, wherry, lighter, or barge*, (unless allowed by a justice of peace, &c. on extraordinary occasion; and except forty watermen who may ply on the *Thames* on *Sundays*, betwixt *Vauxhall* and *Limehouse*, by stat. 11 & 12 *W. c.* 21. § 13.) on pain of 5*s.*: and if any person offending in any of the premises shall thereof be convicted in ten days after the offence before one justice on view or confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens to seize the goods cried, shewed forth, or put to sale, and to sell the same; and to levy the other forfeitures by distress; to the use of the poor, except that the justice may out of the same reward the informer with any sum not exceeding one-third part. And for want of distress, the offender shall be set publicly in the stocks for two hours.

Crying, shewing forth, or exposing to sale, wares, fruit, &c. Exceptions.

Travelling with boats, &c.

2 G. 3. c. 15. Fish carriages.

By stat. 2 *G.* 3. *c.* 15. § 7. *Fish* carriages shall be allowed to pass on *Sundays* and holidays, whether laden or returning empty.

Baker.

Rex v. *Cox*, 2 *Burr.* 785. An information was moved for against a justice of the peace, for refusing to receive an information against a *baker* for exercising his trade on a *Sunday*, contrary to the aforesaid statute of the 29 *C.* 2. *c.* 7. On shewing cause, it appeared that the charge against the baker was not for baking *bread*, but for baking puddings and pies, and other such things for dinner. And the court were of opinion, that this was not an offence within the act; but falls within the exception of works of necessity and charity, and within the equity of the proviso as being a cook's shop; there being the same reason that the baker should bake for others, as that a cook should roast and boil for them: and it is better that one baker and his men should stay at home, than many families and servants. And the rule to shew cause was discharged with costs.

Upon the same principle, it has been ruled that the statute does not prohibit a baker baking dinners for his customers on a *Sunday*. Lord *Kenyon* in that case said, that the statute should be construed equitably, so as that it may answer the purposes of public convenience, taking care at the same time that *Sunday* should not be profaned. *Rex* v. *Younger*, 5 *T. R.* 449.

A person can commit but one offence on the *same* day, by *exercising his ordinary calling on a Sunday.*

Crepps v. *Durden*, 2 *Cowp.* 640. The plaintiff was convicted for selling small hot loaves of bread on the same day, being *Sunday*, by four separate convictions, in the sum of 5*s.* each. It was objected, that there can be but one offence, attended with one single penalty, on one and the same day. By Ld. *Mansfield*: The true construction of the act is, exercising his ordinary trade upon the Lord's day, and that without any fraction of a day,

hours, or minutes. It is one entire offence; whether longer or shorter in point of duration, or whether it consist of one or a number of particular acts, makes no difference. The penalty incurred is 5*s*. There is no idea conveyed by the act, that, if a tailor sews on the Lord's day, every stitch he takes is a separate offence; or if a shoemaker or carpenter work for different customers at different times on the same *Sunday*, that those are so many separate and distinct offences. There can be but one entire offence on one and the same day. And this is even a much stronger case than that upon the game laws. Killing a single hare is an offence, but the killing of ten more in the same day will not multiply the o fence, or the penalty imposed by the statute for killing one. Here repeated offences are not the object which the legislature had in view in making the statute, but singly, to punish a man for exercising his ordinary calling on the Lord's day. Crepps v. Durden.

By stat. 50 *G.* 3. *c.* 73, § 3. No master, mistress, journeyman, or other person respectively exercising or employed in the trade or calling of a baker, beyond the said city of *London* or the liberties thereof, or beyond the said ten miles of the *Royal Exchange*, shall on the Lord's day, commonly called *Sunday*, or any part thereof, make or bake any household or other bread, rolls, or cakes of any sort or kind, or shall on any part of the said day, excepting between ten in the forenoon and half-past one in the afternoon, on any pretence whatsoever, sell, or expose to sale, or permit or suffer, &c. any bread, rolls, or cakes of any sort, or bake or deliver, or permit or suffer, &c. any meat, pudding, pie, tart, or victuals, at any time after half-past one in the afternoon of that day, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and no meat, pudding, pie, tart, or victuals, shall be brought to or taken from any bakehouse during the time of divine service in the church of the parish, hamlet, or place where the same is situate, nor within one quarter of an hour of the time of commencement thereof; and every person offending therein, or making any sale or delivery, hereby allowed between the hours aforesaid, otherwise than within the bakehouse or shop, and being thereof convicted before a justice where the offence shall be committed, within two days from the commission thereof, either upon view, or on confession, or proof by one witness upon oath, shall for the first offence forfeit 5*s*., for the second offence not exceeding 10*s*., and for the third and every subsequent offence respectively, not exceeding 15*s*., and shall moreover on every such conviction pay the costs and expences of the prosecution, to be assessed by the said justice, and the amount, together with such part of the penalty as such justice shall think proper to be allowed to the prosecutor for loss of time in instituting and following up the prosecution, at a rate not exceeding 3*s*. *per diem*, and be paid to the prosecutor for his own use, and the residue to be paid to such justice, and within seven days after the receipt thereof to be transmitted by him to the churchwardens or overseers of the parish where the offence shall be committed, for the benefit of the poor; and in case the 50 G. 3. c. 73, Limitation as to baking on Sunday.

50 G. 3. c. 73. whole amount as aforesaid be not paid within three days after conviction, such justice shall by warrant direct the same to be levied by distress, and in default thereof commit the offender to the house of correction on a first offence for (not exceeding) seven days, on the second offence for not exceeding fourteen days, and on the third or any subsequent offence for not exceeding twenty-one days, unless the whole of the penalty, costs, and expences be sooner paid.

§ 4. Saves the right of the universities, and § 5. extends the pains and penalties of former acts to the present.

1 & 2 G. 4. c. 50. Regulations as to baking on Sundays.

By stat. 1 & 2 *G.* 4. c. 50. § 11. No master, mistress, journeyman, or other person, respectively exercising or employed in the trade or calling of a baker, out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality and 10 miles of the *Royal Exchange*, shall, on the Lord's day, commonly called *Sunday*, or any part thereof, make or bake any household or other bread, rolls, or cakes of any sort or kind, or shall on any part of the said day sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes, of any sort or kind, except to travellers, or in cases of urgent necessity; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, at any time after half-past one of the clock in the afternoon of that day, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, except as aforesaid, and also except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and no meat, pudding, pie, tart, or victuals shall be brought to or taken from any bake-house during the time of divine service in the church, parish, hamlet, or place where the same is situate, nor within one quarter of an hour of the time of commencement thereof; and every person offending against the foregoing regulations, or any one or more of them, and being thereof convicted before any magistrate or justice of the city, county, or place where the offence shall be committed, within two days from the commission thereof, either upon the view of such magistrate or justice, or on confession by the party, or proof by one or more witness or witnesses upon oath or affirmation as aforesaid, shall for every such offence forfeit and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say,) for the 1st offence the penalty of 5*s.*, for the 2d offence the penalty of 10*s.*, and for the 3d and every subsequent offence respectively, the penalty of 20*s.*; and shall moreover on every such conviction pay the costs and expences of the prosecution, such costs and expences to be assessed, settled, and ascertained by the magistrate or justice convicting, and the amount thereof, together with such part of the penalty as such magistrate or justice shall think proper, to the prosecutor or prosecutors, for loss of time in instituting and following up the prosecution, at a rate not exceeding 3*s.* per diem, and be paid to the prosecutor or prosecutors for his and their own use and benefit; and the residue of such penalty to be paid to such magistrate or justice, and within seven days after his or their receipt thereof to be transmitted by him to the churchwardens or overseers of the parish or parishes where the offence shall be com-

First offence. Second offence. Third offence.

mitted, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expences as aforesaid, be not paid within three days after the conviction of the offender or offenders, such magistrate or justice shall and may, by warrant under hand and seal, direct the same to be levied and raised by distress and sale of the goods and chattels of the offender or offenders, rendering the overplus, if any; or in default or insufficiency of such distress, to commit the offender or offenders to the house of correction, on a 1st offence for any time not exceeding 14 days, and on the 2d or any subsequent offence for any time not exceeding 21 days, unless the whole of the penalty, costs, and expences be sooner paid and discharged. 1 & 2 G. 4. c. 50.

And by stat. 3 *G.* 4. *c.* cvi. § 16. No master, mistress, journeyman, or other person respectively exercised or employed in the trade or calling of a baker within the limits aforesaid, shall, on the Lord's day, or on any part thereof, make or bake any bread, rolls, or cakes of any sort or kind; or shall, on any other part of the said day than between the hours of nine of the clock in the forenoon and one of the clock in the afternoon, on any pretence whatsoever, sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes, of any sort or kind; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, except as hereinafter is excepted, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting or superintending the sponge to prepare the bread or dough for the following day's baking, and every person offending against the last-mentioned regulations, or any one or more of them, or making any sale or delivery hereby allowed otherwise than within the bakehouse or shop, and being thereof convicted (B.) before any justice of the peace of the city, county, or place where the offence shall be committed, within six days from the commission thereof, either upon the view of such justice, or on confession by the party, or proof by one or more credible witness or witnesses upon the oath or affirmation, shall for every such offence pay and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say), for the first offence the penalty of 10*s.*, for the second offence the penalty of 20*s.*, and for the third and every subsequent offence respectively the penalty of 40*s.*; and shall moreover, upon every such conviction, bear and pay the costs and expences of the prosecution, such costs and expences to be assessed, settled, and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding 3*s.* *per diem*, and to be paid to the prosecutor or prosecutors for his, her, and their own use and benefit, and the residue of such penalty to be paid to such justice, and within seven days after his receipt thereof to be transmitted by him to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expences aforesaid, be not forthwith paid after conviction of the offender or offenders, such justice shall and may, by

3 G. 4. c. cvi. Bakers shall not bake bread or rolls on the Lord's day; nor sell bread, nor bake bread, pies, &c. except between certain hours.

(B.)

Penalty for the first offence 10s, for the second offence 20s., and for every subsequent offence 40s.

3 G. 4. c. cvi.

To be levied by distress.

warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender or offenders, and in default or insufficiency of such distress, commit the offender or offenders to the house of correction, on a first offence for the space of seven days, for a second offence the space of fourteen days, and on a third or any subsequent offence for the space of one month, unless the whole of the penalty, costs, and expences be sooner paid and discharged: Provided nevertheless, that it shall be lawful for every master or mistress baker, residing within the limits aforesaid, to deliver to his or her customers, on the Lord's day, any bakings until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this act contained.

Bakings may be delivered till half past one on Sundays.

13 G. 3. c. 80. Killing game on the Lord's day.

By stat. 13 *G.* 3. *c.* 80. § 6. If any person shall, on a *Sunday*, knowingly and wilfully take, kill, or destroy, or use any gun, dog, snare, net, or engine for taking, killing, or destroying any hare, pheasant, partridge, moor-game, or heath-game, he shall, on conviction on the oath of one witness before one justice, forfeit for the first offence not exceeding 20*l.* nor less than 10*l.*; for the second offence not exceeding 30*l.* nor less than 20*l.*, and where he has been already convicted of a first and second offence against the act, for the third and every other offence, 50*l.*; to be recovered upon indictment at the sessions: (as is set forth more particularly under the title Game, Vol. II., p. 622. as also the further penalties in case of nonpayment).

29 C. 1. c. 7. Serving process on the Lord's day.

By stat. 29 *C.* 1. *c.* 7. § 6. No person upon the Lord's day shall serve or execute any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace), but the service thereof shall be void; and the person serving the same shall be as liable to answer damages to the party grieved, as if he had done the same without any writ, process, warrant, order, judgment, or decree.

Ecclesiastical process.

But this doth not extend to ecclesiastical process, as citations, or excommunications. *Gibs.* 271. 1 *Ld. Raym.* 706.

Justice's warrant to obtain sureties for good behaviour.

A justice issued a warrant to the constable, to make a person find sureties for his *good behaviour:* the constable executed the warrant on a *Sunday*, and he was justified by the court; who resolved, that a warrant for a good behaviour is a warrant for the *peace*, and more; and that this statute is to be favourably interpreted for the peace. *T. Raym.* 250.

Arresting for a rescue.

So a person may be arrested on a *Sunday* on an attachment for a rescue. *Will.* 459.

On an escape warrant.

Or under an escape warrant. *Sir W. Moore's case,* 2 *Ld. Raym.* 1028.

For a wrongful escape.

Or, if the party has wrongfully escaped, he may be retaken on a *Sunday* without a warrant. *Ib. and* 5 *T. R.* 25.; *and Barnes*, 373.

Bail taking defendant in an action.

But bail cannot take the defendant on a *Sunday* in order to surrender him. 2 *Blac. Rep.* 1273.

Warrant of commitment for a penalty cannot be executed on Sunday.

It has been held, that, by the construction of stat. 29 *C.* 2. *c.* 7. § 7., a warrant of commitment for a penalty cannot be executed on a *Sunday*, and that the apprehension on that day is wholly void, and the defendant entitled to be discharged out of custody. *Rex* v. *Myers*, 1 *T. R.* 265. *On the Lottery Act.*

By stat. 29 *C.* 2. *c.* 7. § 5. No hundred shall be answerable for any robbery on the Lord's day: nevertheless the inhabitants shall make hue and cry after the offenders, on pain of forfeiting to the king as much money as might have been recovered by the party robbed against the hundred, if he had been robbed on any other day. (See Hundred, and Hue and Cry, Vol. II.) 29 C. 2. c. 7. Robbery on the Lord's day.

Tashmaker v. the *Hundred* of *Edmonton*, 1 *Str.* 406. *Com.* 345. The plaintiff lived a mile or two from the church, and going thither with his lady in his coach on a *Sunday* was robbed, and brought his action against the hundred, and recovered; for the statute extends only to the case of *travelling*. But *Pratt* C. J. said, if they had been going to make visits, it might have been otherwise.

A. Warrant on stats. 3 *C.* *c.* 1. and 29 *C.* 2. *c.* 7. to levy 20*s.* on a Carrier for travelling on the Lord's Day; which same will do, *mutatis mutandis*, for the other Penalties under this Title. A.

County of ——— { To the constable of ——— in the said county, and to the churchwardens of the parish of ——— in the said county.

FORASMUCH as A. O. *of* ——— *in the county of* ———, *carrier, is duly convicted before me,* J. P. *esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, for that he the said* A. O. *on the* ——— *day of* ——— *in the* ——— *year of the reign of* ———, *being the Lord's day, commonly called* Sunday, *with his horses into and through the said parish of* ——— *did travel, contrary to the statutes in that case made and provided, whereby he hath forfeited the sum of* 20*s. of lawful money of* Great Britain; *these are therefore to command you forthwith to levy the said sum of* 20*s. by distraining the goods and chattels of him the said* A. O. *And if within the space of* [*five*] *days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay the sum of* 6*s.* 8*d.*, *part of the said sum of* 20*s.*, *to* A. I. *of* ———, *yeoman, who informed me of the said offence, and that you see the remaining sum of* 13*s.* 4*d. employed to the use of the poor of your said parish of* ———, *returning to him the said* A. O. *the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Herein fail you not. Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ———.

B. Form of Conviction on stat. 3 *G.* 4. *c.* cvi. B.

Westmorland, to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of the reign of* ——— A. B. *is convicted before* ——— *majesty's justices of peace for the said county of* ——— [or *for the* ——— *division*

of the said county of ——— *or for the city, liberty, or town of* ——— as the case shall happen to be], *for* ——— *and* ——— *do adjudge him, her, or them* [as the same may be], *to pay and forfeit for the same the sum of* ———. *Given under* ——— *the day and year aforesaid.*—See Vol. I. tit. Conviction.

Lotteries. See Gaming.
Low Wines. See Excise.

Lunatics.

[17 Ed. 2. st. 1. c. 9. & 10.—15 G. 2. c. 30.—17 G. 2. c. 5.—29 G. 2. c. 31.—11 G. 3. c. 20.—14 G. 3. c. 49.—19 G. 3. c. 15.—26 G. 3. c. 91—39 & 40 G. 3. c. 94.—43 G. 3. c. 75.—48 G. 3. c. 96.—51 G. 3. c. 79.—55 G. 3. c. 46.—56 G. 3. c. 117.—59 G. 3. c. 127.—1 & 2 G. 4. c. 114.—5 G. 4. c. 71.]

NON compos mentis is of four kinds:

First, Idiots; who are of *non sane memory* from their nativity, by a perpetual infirmity. 1 *Inst.* 247.

Secondly, Those that lose their memory and understanding by the visitation of God, as by sickness or other accident.

Thirdly, Lunatics; who have sometimes their understanding, and sometimes not.

Fourthly, Drunkards; who by their own vicious act for a time deprive themselves of their memory and understanding.

Inciting a madman to commit a crime. He who incites a madman to do a murder, or other crime, is a principal offender, and as much punishable as if he had done it himself. 1 *Haw. c.* 1. § 7.

Idiots, &c. not punishable for crimes. But idiots and lunatics, who are under a natural disability of distinguishing between good and evil, are not punishable by any criminal prosecution. 1 *Haw. c.* 1. § 1.

It is not every frantick and idle humour of a man that will exempt him from justice and the punishment of the law. When a man is guilty of a great offence, it must be very plain and clear before a man is allowed such an exemption; therefore it is not every kind of frantick humour, or something unaccountable in a man's actions, that points him out to be such a madman as is to be exempted from punishment. It must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast; such an one is never the object of punishment. *Per Tracy* J. *R.* v. *Arnold,* 16 *Howell's St. Tri.* 764.

If there be a total permanent want of reason, it will acquit the prisoner. If there be a total temporary want of it, when the offence was committed, it will acquit the prisoner. But if there be only a partial degree of insanity, mixed with a partial degree of reason; not a full and complete use of reason, but (as Lord *Hale* carefully and emphatically expresses himself) a competent

use of it, sufficient to have restrained those passions, which produced the crime; if there be thought and design; a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then, upon the fact of the offence proved, the judgment of the law must take place. *Per Yorke, Solicitor General in Ld. Ferrers's case*, 19 *Howell's St. Tri.* 947, 948. *et per Lawrence* J. *R.* v. *Allen, tried at Stafford Lent Ass.* 1807, *for murdering three of his children. M.S.*

Drunkards shall have no privilege by their want of sound mind; but shall have the same judgment as if they were in their right senses. 1 *Inst.* 247. 1 *Haw. c.* 1. § 6. 1 *Hale*, 32. **Drunkards.**

But if a person, who wants discretion, commit a trespass against the person or possession of another; he shall be compelled in a civil action to give satisfaction for the damage. 1 *Haw. c.* 1 § 5. **Punishable for civil offences.**

If one who hath committed a capital offence become *non compos* before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. *Hale's Sum.* 10. 1 *Haw. c.* 1. § 3. **Becoming non compos before trial.**

By the common law, if it be doubtful whether a criminal, who at his trial in appearance is a lunatic, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff; and if it be found by them that the party only feigns himself mad, and he still refuse to answer, he shall be dealt with as if he had confessed the indictment. 1 *Haw. c.* 1. § 4. **How tried whether he is non compos.**

By stat. 39 & 40 *Geo.* 3. *c.* 94. § 1. In all cases, where it shall be given in evidence upon the trial of any person for treason, murder, or felony, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of committing such offence, and to declare whether they acquitted him on account of such insanity; and if they do so find, the court shall order such person to be kept in strict custody in such place and in such manner as to them shall seem fit, until his H. M.'s pleasure shall be known; whereupon H. M. may give such order for the safe custody of such person during his pleasure in such place and manner as to H. M. shall seem fit. **39 & 40 G. 3. c. 94. Person insane being tried for any offence may be secured upon the jury's acquitting him and finding him insane.**

§ 2. When any person who shall be indicted for *any offence*, shall be insane, and upon arraignment shall be found by a jury impanelled for that purpose to be insane, so that he cannot be tried, or when upon the trial he shall be found to be insane, the court may record such finding, and order the party to be kept in strict custody until H. M.'s pleasure shall be known; and if any person, charged with any offence, shall be brought before any court to be discharged for want of prosecution, and such person shall appear to be insane, the court may order a jury to be impanelled to try the sanity of such person; and if the jury find him to be insane, the court may order such person to be kept in strict custody, &c.; and in all cases of insanity his majesty may give such order, &c. (as in the former section.)

§ 3. And for the better prevention of crimes being committed by persons insane, if any person shall be discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime, for which if committed **Persons suspected of insanity.**

39 & 40 G.3. c.94. he would be liable to be indicted, and any justice before whom such person may be brought shall think fit to issue a warrant for committing such person as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed, except by two justices, one whereof shall be the justice who issued such warrant, or by the quarter sessions, or by one of the judges or lord chancellor, lord keeper, or commissioners of the great seal.

48 G. 3. c. 96. Persons charged with murder, being insane, justices to enquire into their settlement, and make order for their maintenance.

And by stat. 48 *G.* 3. *c.* 96. § 27. After reciting stat. 39 & 40 *G.* 3. *c.* 94. § 2. and that it is expedient that provision should be made for the due maintenance and care of such persons while they shall be so kept in custody, it is enacted, that in all cases where any person shall by virtue of the said recited act be kept in such custody as a lunatic or insane person, by order of any court or by H. M.'s order subsequent thereto, it shall be lawful for any two justices of the peace of the county where such person shall be so kept in custody, to enquire into and ascertain, by the best legal evidence that can be procured under the circumstances of personal legal disabiliy of such lunatic, the place of the last legal settlement, and the circumstances of such person; and if it shall not appear that he or she is possessed of sufficient property which can be applied to his or her maintenance, to make order upon such parish where they shall adjudge him or her to be legally settled, to pay such weekly sum for his or her maintenance in such place or custody as such court or H. M. shall appoint, as shall from time to time be fixed upon and directed in writing by one of H. M.'s principal secretaries of state; and that where such place of settlement cannot be ascertained, such allowance shall be paid by the treasurer of the county where such person shall have been apprehended; but if it shall appear that such person is possessed of such sufficient property as aforesaid, then such justices shall order and direct the same to be applied to pay and satisfy the expence of the maintenance of such person, in the manner directed in the case of lunatics and mad persons by the act, 17 *G.* 2. *c.* 5.

Appeal.

§ 20.: provided always, that the churchwardens and overseers of such parish in which the said justices shall adjudge any lunatic to be legally settled, or the major part of them, may appeal against such order to the general quarter sessions of the peace to be holden for the county where such order shall be made, in like manne and under like restrictions and regulations as against any order of removal, giving reasonable notice thereof to the clerk of the peace of such county, who shall be respondent in such appeal; which said appeal the justices of the peace assembled at the said general quarter sessions are hereby authorised and empowered to hear and determine, in the same manner as other orders of removal are now heard and determined.

56 G. 3. c. 117. Offenders becoming insane during confinement, may be removed to any lunatic asylum.

And by stat. 56 *G.* 3. *c.* 117. After reciting stat. 39 & 40 *G.* 3. *c.* 94. and that it is expedient that provision should be made for the due care of persons who may, after conviction for any criminal offence, become insane, it is enacted, that if any person having been duly convicted of any offence, who after such conviction and during his or her imprisonment, or continuance in any gaol, prison, hulk, penitentiary house, or house of correction, under sentence of transportation or imprisonment, shall become insane, and it shall be duly certified by two physicians or surgeons that such person is

insane, it shall be lawful for one of H. M.'s principal secretaries of state to direct, by warrant under his hand, that such person as aforesaid shall be removed to such lunatic asylum or other proper receptacle for insane persons in the U. K., as H. M.'s said principal secretary of state may judge proper and appoint; and every such person so removed as aforesaid shall remain under confinement in such lunatic asylum or other proper receptacle as aforesaid, or in any other lunatic asylum or other proper receptacle, to which such person may be removed by any like order, until it shall be duly certified to H. M.'s said principal secretary of state, by two physicians or surgeons, that such person has become of sound mind; whereupon H. M.'s said secretary of state is hereby authorised, if such person shall still remain subject to imprisonment or to be continued in custody, to issue his warrant to the keeper or other person having the care of any such lunatic asylum or other proper receptacle as aforesaid, directing that such person shall be removed back from such lunatic asylum or other proper receptacle, to the gaol, prison, hulk, penitentiary house, or house of correction, from whence the said person or persons shall have been taken, for the purposes of being confined in such lunatic asylum or other proper receptacle as aforesaid during the time of their being insane; or, if the period of imprisonment or custody of such person had expired, that such person shall be discharged. 56 G.3. c. 117.

The king is the general guardian of idiots and lunatics. 17 *Ed.* 2. *st.* 1. *c.* 9, & 10. King the guardian of lunatics.

But the custody of lunatics is generally committed to the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, by the king's sign manual. All matters therefore touching lunatics are within the peculiar jurisdiction of the court of chancery.

Any person may justify confining and beating his friend, being mad, in such manner as is proper in such circumstances. 1 *Haw.* *c.* 60. § 23. Friends restraining him.

A person of *non sane* memory shall not avoid his own act, by reason of this defect; but his heir or executor may. *Beverley's case*, 4 *Rep.* 123. *b.* Whether he may avoid his own act.

If an ideot, or a lunatic, not being in a lucid interval, take a wife, the marriage is void; for consent is necessary to make a marriage effectual, and neither of them is capable of consenting to any thing. But as it might be difficult to prove the exact state of the party's mind at the actual celebration of the nuptials, it is provided by stat. 15 *G.*2. *c.* 30. that the marriage of lunatics and persons under phrenzies (if found lunatics under a commission, or committed to the care of trustees by any act of parliament,) before they are declared of sound mind by the lord chancellor or the majority of such trustees, shall be totally void. 1 *Blac. Com.* 439. Whether he may consent to marriage. 15 G.2. c.30.

A lunatic may surrender a lease in the court of chancery or exchequer, in order to renew the same, stat. 29 *G.* 2. *c.* 31. How he may surrender or accept a surrender of leases.

Also, by the direction of the lord chancellor, he may accept a surrender of such lease, and execute a new one, stat. 11 *G.* 3. *c.* 20.

For provisions to authorise the sale or mortgage of the estates of persons found lunatic by inquisition, in *England* or *Ireland* respectively; and for granting leases of the same; see stats. 43 *G.* 3. *c.* 75. and 1 & 2 *G.* 4. *c.* 114. Sale of lunatics' estates.

Whether he may make a will.

To make a will, it is not sufficient that the testator have memory to answer to familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his estate, with understanding and reason. 6 *Rep.* 23.

17 G.2. c.5. Dangerous lunatics may be restrained by order of two justices. (A.)

By stat. 17 G. 2. c. 5. § 20. *After reciting that there are sometimes persons, who by lunacy, or otherwise, are furiously mad, or are so far disordered in their senses, that they may be dangerous to be permitted to go abroad; it is enacted, that it shall be lawful for any two or more justices of the peace, where such lunatic or mad person shall be found, by warrant* (A) *under their hands and seals, directed to the constables, churchwardens and overseers of the poor of the parish, town or place, or some of them, to cause such person so to be apprehended, and kept safely locked up in some secure place, within the county or precinct, where such parish, town or place shall lie, as such justices shall under their hands and seals direct and appoint; and (if such justices find it necessary) to be there chained, if the last legal settlement of such person shall be in any parish, town or place within such county or precinct; and if such settlement shall not be there, then such person shall be sent to the place of his or her last legal settlement by a pass,* mutatis mutandis, *as aforesaid, and shall be locked up or chained, by warrant of two justices of the county or precinct to which such person is so sent, in manner aforesaid; and the reasonable charges of removing, and of keeping, maintaining and curing such persons during such restraint (which shall be for and during such time only as such lunacy or madness shall continue), shall be satisfied and paid (such charges being first proved upon oath) by order* (B) *of two or more justices of the peace, directing the churchwardens or overseers where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands and tenements, as is necessary to pay the same; and to account for what is so seized, sold or received, to the next quarter-sessions; but if such person hath not an estate to pay and satisfy the same, over and above what shall be sufficient to maintain his or her family, then such charges shall be satisfied and paid by the parish, town or place to which such person belongs, by order of two justices, directed to the churchwardens or overseers for that purpose.*

Goods and estates of lunatics to be seized, to pay the charge of their maintenance. (B.)

Otherwise at the charge of the parish.

Appeal.

§ 26. Enacts that any persons aggrieved by any act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions of the county, riding, liberty, or division, giving reasonable notice thereof, whose order thereupon shall be final.

Exceptions.

§ 21. And nothing herein shall restrain or abridge the power of the king or lord chancellor; nor shall restrain or prevent any friend from taking them under their own care and protection.

But the above parts of the act relate to vagrant lunatics only, who are strolling up and down the country, and do not extend to persons who are of rank and condition in the world, and whose relations can take care of them properly by applying to the court of chancery. 2 *Atk.* 52.

14 G.3. c.49. Houses for reception of lunatics to be licensed.

By stat. 14 *G.*3. *c.*49. (made perpetual by stat. 26 *G.*3. *c.*91.) No person, on pain of 500*l.*, shall conceal, harbour, entertain or confine in any house kept for the reception of lunatics more than one lunatic at one time, (except such lunatics as are com-

mitted by the lord chancellor, &c.) without a licence to be granted yearly by the college of physicians within *London* and *Westminster* and seven miles thereof, and within the county of *Middlesex*, and elsewhere by the justices in sessions. 14 G. 3. c. 49.

§ 19. Relates to a permission from the commissioners to search for particular persons.

§ 21. Relates to certain matters to be observed by keepers upon the admission of lunatics.

§ 23. The justices at the sessions, out of *London* and *Middlesex*, &c. are authorised to grant licences; the person applying to pay for the licence 10*l.* if the number of lunatics kept do not exceed ten, and 15*l.* where the number is greater than ten. No licence shall authorise any person to keep more than one such house; and such licence shall be in force for one year only.

Visitors. The justices at the time of granting the licences are to appoint two justices and a physician, who or any two of whom (whereof the physician to be one) may visit in the day time every licensed house as often as they think fit.

§ 24. Provides for the conduct of the visitors upon their visits.

§ 26. Keepers refusing the visitors admittance in the day time forfeit their licences.

Receiving lunatic without testimonial of lunacy, &c. § 27. Every keeper, who shall receive a lunatic into his house, without an order in writing under the hand and seal of some physician, surgeon, or apothecary, that such person is proper to be received there as a lunatic, or shall not within fourteen days give notice of the receipt of such lunatic to the secretary of the commissioners at the college of physicians in *London*, shall forfeit 100*l.*

Security by keeper. § 28. No licence shall be granted unless the keeper enter into a recognisance in 100*l.* with two sureties in 50*l.* each, or one surety in 100*l.*; on the usual conditions for the good behaviour of the keeper.

§ 30. The act shall not extend to any of the public hospitals.

§ 32. Penalties and forfeitures incurred out of *London* and *Middlesex*, &c. may be recovered by action in the courts at *Westminster* in the name of the clerk of the peace for the county where the offence was committed; one moiety to go to the informer, and the other to defray the expences of the act within such county.

The act also contains various distinct regulations for such houses in *London*, *Westminster*, and within seven miles of the same, and in the county of *Middlesex*.

48 G. 3. c. 96. County Asylum. By stat. 48 G. 3. c. 96. intituled "*An act for the better care and maintenance of lunatics, being paupers or criminals in* England," after reciting "that the practice of confining such lunatics and other insane persons as are chargeable to their respective parishes in gaols, houses of correction, poor houses, and houses of industry, is highly dangerous and inconvenient; and that it is expedient that further provision should be made for the care and maintenance of such persons, and for the erecting proper houses for their reception, and also for erecting additional buildings adjoining or contiguous thereto for the reception of other lunatics; and that it is also expedient that further provision should be made for the custody of insane persons who shall commit criminal offences; it is enacted, that it shall and may be lawful for the

48 G.3. c.96.

Justices may give notice respecting the erecting lunatic asylum.

justices of the peace in and for every county within *England* and *Wales*, at their respective general quarter sessions of the peace, or any adjournment of the same, or the major part of such justices then and there assembled, to direct notice to be given in some public newspaper or newspapers circulated in or near such county, of their intention of taking into consideration, at their next general quarter or general annual sessions, the expediency and propriety of providing a lunatic asylum or house for the reception of lunatics and other insane persons within the said county, or of appointing a committee of magistrates to treat with any one or more of the adjacent counties to unite for that purpose."

Empowering justices to contract, and appoint visiting justices,

§ 2. " The said justices of the peace, after such notice being given as aforesaid, shall at their next general quarter or general annual sessions proceed to take the same into consideration; and if it shall appear to the major part of the said justices being then and there assembled, such major part not being less in number than seven, that it is expedient that a lunatic asylum or house for the reception of lunatics and other insane persons should be erected in and for the said county sole, the said justices shall nominate and appoint such number of visiting justices as they may think fit to superintend the building, erection, and management of such lunatic asylum, and from time to time to report the state of their proceedings to the court of the general quarter sessions."

and also committee of justices.

§ 3. " In all cases where it shall appear expedient to the justices of the peace in and for any county to unite with any one or more adjacent county or counties for the purposes of this act, and for the providing a lunatic asylum to serve for the said several counties, it shall be lawful for the said justices, at their respective general quarter sessions, (whereof due notice shall be given as aforesaid,) to nominate and appoint any number of justices not exceeding five, to be a committee for treating with any adjacent county or counties for that purpose."

Agreement to be entered into, when counties shall be united.

§ 4. " Where the committees of justices so appointed by any two or more counties, shall think fit to unite the said counties for the purposes of this act, and shall signify their inclination and desire so to do at a meeting holden for that purpose, an agreement shall at such meeting, or as soon as convenietly may be afterwards, be entered into by the said justices so appointed as aforesaid, or the major part of them, in the form or to the effect set forth in the schedule hereunto annexed (No. 1.); which agreement, when subscribed by the major part of the justices so nominated and appointed for each county, shall be binding upon the said counties; and every such agreement shall specify the place at or near which such lunatic asylum shall be situate, and the proportions in which the expences necessary for the carrying into execution the purposes of this act shall be charged and assessed upon the several counties so uniting, which proportions shall be calculated by the said justices so appointed upon the numbers of the respective population of the said several counties, as stated in the returns to an act, passed in the forty-first year of H. M.'s reign, intituled *An act for taking an account of the population of* G. B., *and of the increase and diminution thereof;* and the said agreement shall also specify the number of visiting justices to superintend the building, erection,

41 G.3. (G.B.) c.15.

and management of the said lunatic asylum to be appointed by each of the respective counties so uniting, which number shall be in proportion to the share of the expences so to be charged and assessed upon each of such respective counties, but so that a number less than three shall in no case be appointed for any county so united." 48 G.3. c.96.

By stat. 55 *G.* 3. *c.* 46. § 10. it is enacted, that in all cases of the union of any two or more counties, or of the union of any place or places of distinct jurisdiction with any such county or counties, the proportion of the expences necessary for carrying into execution the purposes of stats. 48 *G.* 3. *c.* 96. or 51 *G.* 3. *c.* 79. or of this act, shall be calculated upon the numbers of the respective population of the said several counties and places as shall have been stated in the last returns of the said population, which shall have been made under the authority of parliament previous to the union of such counties. 55 G.3. c.46.

Limiting the number of visitors.

§ 11. Provided that the number of visitors to be appointed by any such place of distinct jurisdiction so uniting with any county or counties, shall bear the same proportion to the number of visiting justices appointed by such county or counties, as the population of such place shall bear to the population of such county or counties, and shall in no case exceed such proportion.

5 G.4. c.71. In cases where two counties have united, &c. the number of visiting justices or visitors may be increased from time to time, notwithstanding any original agreement.

And by stat. 5 *G.* 4. *c.* 71. § 2. And whereas doubts may arise in cases where two counties may have united, or in cases where the justices of the peace of any county may have united with the subscribers to any institution for the care of lunatics established by voluntary contribution, for the purpose of erecting a lunatic asylum, whether the number of visiting justices or visitors of such asylum can from time to time be increased; be it further enacted, that it shall and may be lawful for the number of visiting justices or visitors of such asylum, to be increased from time to time, notwithstanding the terms of any original agreement between such counties, or between such justices of any county and the subscribers to any such institution, due regard being always had in making such augmentation to the proportion originally established between such visiting justices or visitors as aforesaid; and any such additional number of visiting justices or visitors as may be agreed on shall be appointed in the same manner, and by the same authorities, as vacancies in the number of such visiting justices or visitors may be supplied by any law now in force.

48 G.3. c.96. Agreement to be reported at quarter sessions.

By stat. 48 *G.* 3. *c.* 96. § 5. "Whensoever such agreement shall have been so entered into and signed as aforesaid, the justices se appointed to be a committee for each county so uniting shall respectively report the same to the justices of the peace at their next general quarter sessions to be holden for each of the said counties, and shall then and there deliver into court a duplicate of the said agreement, to be by the clerks of the peace of the said counties entered among the records; and the said justices shall then and there immediately proceed to nominate such number of persons as by the said agreement they may be entitled to appoint to be visiting justices of the said asylum till the next *Michaelmas* general quarter sessions, and shall continue annually to appoint such number of visiting justices at each *Michaelmas* general quarter sessions."

48 G.3. c.96.

Empowering visiting justices to contract.

§ 6. "The said visiting justices so nominated and appointed by such county sole or such united counties, are hereby authorised and required, within two calendar months after such nomination and appointment as aforesaid, to meet and assemble at such placeas shall appear to them most convenient for that purpose (due notice thereof being previously given to such visiting justices by the clerk or clerks of the peace of such county or counties respectively), and the said visiting justices may adjourn the said meeting from time to time or from place to place, and meet as often as they shall think necessary; and the said visiting justices or the major part of them are hereby authorised at their said meetings to appoint a clerk and a surveyor for duly exercising the powers of this act, and from time to time to receive plans and estimates, and contract for the purchase of lands and buildings, or for the alteration of any building already belonging to such county or any of such united counties, and for building, erecting, altering, furnishing, and completing such lunatic asylum, and the yards, courts, and outlets thereto belonging, and such contract or contracts shall be made and entered into at the most reasonable rates, and with the most responsible persons; and every such contractor shall give sufficient security for the due performance of his contract to the clerk to such visiting justices; and all contracts when made, and all orders relating thereto, shall be entered in a book to be kept by the clerk to such visiting justices, and when such asylum shall be declared to be completed in manner hereinafter directed, then such book shall be deposited and kept among the records of such county sole, or of such of the counties so united for the purposes of this act as shall have paid the largest quota or proportion of the expences of providing such asylum, to be inspected at all reasonable times by any person contributing to the county rates of such county or counties respectively; and all buildings or land so to be contracted for and purchased, shall be conveyed to such person or persons as the visiting justices shall think fit, in trust for the uses and purposes of this act; and the said visiting justices shall from time to time make their report to the general quarter sessions of the peace of such county or counties respectively, of the several plans, estimates, and contracts which shall have been made and entered into in manner aforesaid; and also a report of the sum or sums of money necessary to be raised and levied on such county sole as the expence, or on each of such united counties as the quota or proportion of the expence to be incurred on the several accounts aforesaid."

Clerk and surveyor to be appointed.

Contracts to be entered in a book.

How expences shall be defrayed.

§ 7. "And in order to defray the expences necessary for the execution of this act, the justices of the peace at their general quarter sessions may and shall cause such sums of money as shall have been from time to time reported to them to be necessary for that purpose by the visiting justices, to be raised in such manner as rates are directed to be raised by two acts made in the twelfth and thirteenth years of his late majesty king *George* the Second, for the more easy assessing, collecting, and levying of county rates, or shall order and direct the same to be paid out of the ordinary rate of such county."

Empowering justices to mortgage the rates. Sch. (No. 2.)

§ 8. "And whereas the expences of carrying this act into execution may in some cases become very burthensome on the occupiers of land, and other the contributors to the county rates,

in case the said expences should be raised in the manner herein- 48 G.3. c.96.
before mentioned," it is therefore enacted, "That when it shall appear on the report of such visiting justices, that the charge and costs of carrying this act into execution will exceed one-half of the amount of the ordinary annual assessment for the county rate for any county (such ordinary assessment to be taken on a mean proportion of the said rate for the last five years preceding), that then and in such case it shall and may be lawful for the justices of the peace within the respective limits of their commissions, so assembled in their quarter sessions as aforesaid, from time to time to borrow and take up on mortgage of the rates herein-mentioned, by instruments in the form contained in the schedule hereunto annexed (No. 2.), or to that or the like effect, any sums not less than 50*l.* each, at legal or lower interest, as to them or the major part of them (such major part not being less than five) shall appear necessary and expedient for the purposes aforesaid, and to secure all and every such sum and sums of money so borrowed upon the credit of the rates to be raised upon such county respectively; and the said justices so assembled as aforesaid are hereby authorised to treat and agree with any person or persons for the loan of any such sum or sums of money, and by their order to confirm and establish every such agreement as aforesaid; and every such agreement so established by such order, and signed by the chairman and two or more justices present at the time of making such order, shall be and the same is hereby declared to be effectual for securing to the person or persons so advancing any sum or sums of money, his, her, or their executors, administrators, and assigns, all and every such sum or sums of money, with interest for the same, on such terms as in and by such agreement or agreements respectively shall be for that purpose stipulated; and the said securities shall be numbered in order of succession in which they shall be granted, and copies or extracts of all such agreements or securities shall be kept with the clerk of the peace or other proper officer having the custody of the records of the quarter sessions of such county respectively; and all and every person and persons to whom any such security or securities shall be made, or who shall be entitled to the money thereby secured, is and are hereby empowered (by indorsing his, her, or their name or names on the back of such security or securities) to transfer and assign the same, and his, her, or their right to the principal money and interest thereby secured, unto any person or persons; and every such assignee may in like manner transfer the same again and so *toties quoties;* and the person or persons to whom such security or securities, or any such assignment thereof shall be made, and his or their respective executors, administrators, and assigns, shall be creditors upon the said rates in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced."

Securities to be numbered;

and may be assigned.

§ 9. "The said justices are hereby authorised and required not only to charge the rates to be raised upon such county with the interest of the money so borrowed on such securities, but also with the payment of a further sum equal at least with the sum so charged for the interest of such securities, which said sums shall be assessed on such county in such manner as county rates are

For charging the rate with a sinking fund to reduce the principal borrowed.

48 G.3. c.96. directed to be assessed by the laws now in being, and paid and applied under the direction of the said justices in discharge of the interest and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the said justices are required to fix one or more day in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for the regular payment thereof; and they are hereby required to appoint a proper person to keep an exact and regular account of all the receipts and payments under the authority of this act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due and what principal money has been discharged and what remains due, and the said book or books so adjusted and settled, to deliver into court at every general annual or *Michaelmas* quarter sessions to be held for any such county; and the said justices are required at every such sessions carefully to inspect all such accounts, and make orders for carrying the several purposes of this act into execution in such manner as to them shall seem meet; and if at any time it shall appear to the said justices that the person so appointed has neglected the said order, and has not duly and without delay applied the money in his hands to the purposes hereby directed, such person shall forfeit double the amount of the money which shall not have been applied to the purposes of this act, to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of such justices; and the said penalty, after the charges of recovering the same, shall be paid to the treasurer of such asylum to be applied to the use of the same; and the said justices on a day and hour to be fixed at some general quarter or annual sessions of the peace, to be holden for such county, (of which fourteen days' public notice shall be given as aforesaid) shall in open court cause all the said several securities to be drawn by lot and numbered for payment according to the event of such drawing, and the securities so drawn and numbered shall be regularly discharged in succession according to priority of such drawn number."

Accounts to be kept of receipts and payments.

Penalty for neglect.

Money borrowed to be repaid within fourteen years.

§ 10. Provides, "that the justices of the peace in their respective quarter sessions shall and they are hereby required to make provisions by means of the rates (which they are hereby authorised to make), and by their orders and directions (which they are hereby authorised to give), in such manner that the whole money to be borrowed under the authority of this act shall be fully paid and discharged within a time to be limited, not exceeding fourteen years from the time of borrowing the same."

Bodies politic to convey lands.

§ 11. "It shall be lawful for H. M., his heirs and successors, and for all bodies politic and corporate, and also for all guardians, committees, husbands, trustees, and attornies of any person or persons being infants, lunatics, idiots, under coverture or any other disability, and also for all other persons who are or shall be seised, possessed of, or interested in any houses, buildings, lands, tenements, hereditaments, easements or privileges which shall be deemed necessary for the purposes of this act, to contract or agree for, and to sell, convey, and assure such houses, buildings, lands, tenements, hereditaments, easements, and privileges unto

such person or persons as shall be named by the visiting justices, in trust and for the purpose of erecting or providing such lunatic asylum, and the yards, courts, and outlets thereunto belonging; and all such contracts, agreements, sales, conveyances, and assurances, shall be valid and effectual in law to all intents and purposes whatsoever." 48 G.3. c.96.

§ 12. "All sums of money which shall be agreed to be paid to any corporation, guardian, committee, husband, trustee, or attorney, for or on behalf of any infants, lunatics, idiots, femes covert, or cestuique trusts, or to any other person or persons whose houses, buildings, lands, tenements, hereditaments, easements, and privileges, shall be limited in settlement, for the purchase of any such lands, tenements, and hereditaments, shall, in case such sums of money shall exceed the sum of 100*l.*, be laid out by such corporations, guardians, committees, husbands, trustees, or attornies, or any person or persons seised of such houses, buildings, lands, tenements, hereditaments, easements, or privileges so limited in settlement, as soon as conveniently may be, in the purchase of lands, tenements, and hereditaments in fee simple, to be conveyed to or to the use of such corporations, guardians, committees, husbands, trustees, or attornies, and to and for such person or persons, and for such estate and estates, and to, for, and upon, and subject to such uses, limitations, remainders, and contingencies as the houses, buildings, lands, tenements, hereditaments, easements, or privileges for and in respect whereof such purchase money shall be paid as aforesaid shall be limited, settled, and assured, at the time such purchase or contract shall be made in manner aforesaid, or such as shall then be capable of taking effect, the charges of such conveyances and settlements to be paid in the same manner as the other expences relating to the lunatic asylum; and in the mean time, and till such purchase or purchases shall be made, such money, whether the same shall or shall not exceed the sum of 100*l.*, shall be laid out by such corporations, or other persons for the time being interested therein, in some government securities, in the names of two persons, one to be nominated by the party or parties for the time being interested therein, and the other by the visiting justices aforesaid: and the interest arising from such securities shall be paid to such person or persons respectively as would have been entitled to the rents and profits of such lands, tenements, hereditaments, easements, and privileges, in case the same had not been sold, or would for the time being be entitled to the rents and profits of such lands, tenements, and hereditaments so to be purchased, in case the same were purchased and settled as aforesaid."

Money to be paid for the purchase of land.

§ 13. Provides, "that no justice of the peace, who shall under the authority of this act do any matter or thing in the execution hereof, shall be capable of having any beneficial interest or concern whatsoever either in his own name or in the name of any other person in trust for him, in any contract or agreement to be made under the authority of this act, or shall for any design or plan he may deliver or produce receive any benefit or emolument whatsoever."

Justices not to be concerned in contracts.

§ 14. "The said visiting justices, or any five or more of them, shall and may and they are hereby authorised to empower their agents or workmen to dig, take, and carry away any soil, clay, sand, gravel, or stone, and to manufacture the same for the pur-

Empowering persons to dig for materials.

18 G.3. c.96. pose of building, carrying on, finishing, and completing such lunatic asylum or other buildings hereby directed to be built, out of, upon, or from any common or waste land, river, or brook, without paying any thing for the same; they causing all pits or quarries made by such digging and taking to be filled up, or railed and fenced so as not to be dangerous to passengers or cattle."

Justices may sue in the name of their clerk.

§ 15. "The said visiting justices may sue and be sued in the name of their clerk, and no action that may be brought or commenced by or against the said visiting justices, or any of them, by virtue of this act, in the name of their clerk, shall abate or be discontinued by the death or removal of such clerk, or by the act of such clerk, without the consent of the said visiting justices, or any five or more of them; but the clerk to the said visiting justices for the time being shall always be deemed plaintiff or defendant in such action, as the case shall be."

Regulations for the situation of the building.

§ 16. "The said visiting justices, as well in the choice of ground and of situation, as in determining upon the plans for building or for purchasing and altering buildings for such lunatic asylums, shall, as far as conveniently may be, fix upon an airy and healthy situation, with a good supply of water, and which may afford a probability of the vicinity of constant medical assistance, and pursue such measures and adopt such plans, as shall provide separate and distinct wards for male and female lunatics, and also for the convalescents and incurables, and also separate and distinct day rooms and airing grounds for the male and female convalescents, and dry and airy cells for the lunatics of every description."

Justices to issue warrant for committal of dangerous lunatics.

§ 17. "So soon as any lunatic asylum so erected as aforesaid, shall be declared by the visiting justices to be completed, and in a fit state for the reception of lunatics and other insane persons, whereof due notice shall be given three times at the least in some public newspaper or newspapers circulating in the county or district of counties united for the purposes of this act, the justices of the peace acting respectively in and for any county or counties at the expence of which such asylum shall have been built, are
C. hereby authorised and directed to issue warrants, (C) upon the application of the overseers of the poor of any parish situate within such county or district of counties for the conveyance of any lunatic, insane person, or dangerous idiot who may be chargeable to such parish, to such asylum, there to be safely kept until he or she shall be duly discharged as hereinafter directed; and at the time of such issuing such warrant every such justice shall
B. D. also make an order (B) (D) upon the overseers of the poor of the parish to which such lunatic, insane person, or dangerous idiot shall belong, to pay such weekly sum to the treasurer of such asylum, as shall, from time to time, be fixed upon by the visiting justices as a fit rate for the maintenance, medicine, clothing, and care of such persons."

Inflicting penalty upon any overseer neglecting to give information to justice of the peace of any lunatic pauper.

§ 18. "If any overseer of the poor of any parish shall wilfully neglect or delay to give information to such justice of the peace of any such lunatic or insane person who shall be chargeable to such parish, or to make application for such warrant as aforesaid, during the space of seven days from the time that he shall be acquainted that such person is so lunatic or insane, he shall for

every such offence forfeit and pay a sum of money not exceeding 10*l.* nor less than 40*s.*, to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of any two justices of the peace acting for the county within which such parish shall be situated, which warrant such justices are hereby required to grant upon the confession of the party, or upon the information of any witness or witnesses upon oath (which oath such justices are hereby empowered to administer); and the said penalty, after the charges of recovering the same shall be deducted, shall be paid, one moiety to the informer, and the other to the treasurer of the said asylum, to be applied to the use of the same." 48 G.3. c.96.

And by stat. 51 *G.* 3. *c.* 79. § 1. after reciting stat. 48 *G.* 3. *c.* 96. § 17. and 18., and that it is expedient that the justices of the peace, to whom such applications shall be made, should have a discretionary power, as to issuing or not issuing such warrants, in certain cases, and under certain restrictions, and particularly in cases where it shall be found that the number of applications on the behalf of persons having just claims to be admitted does at any time exceed the number of those who can be properly accommodated in such asylum, with a view to cure, comfort, and safe custody: it is enacted, that whenever any application shall be made by the overseers of the poor of any parish in any county or district of counties, at the expence of which any lunatic asylum shall have been erected, to any justice of the peace acting in and for such county or counties, to issue his warrant for the conveyance of any lunatic or insane person to such asylum, it shall be lawful for such justice to refuse to issue the warrant so required, if he shall so think fit, such lunatic or insane person not being actually dangerous, provided, that any justice so refusing to issue such warrant, shall, at the time of his so refusing, deliver in writing to the overseers of the poor making such application as aforesaid the reasons for such refusal. 51 G.3. c.79.

Whenever application shall be made by overseers of any parish of any county in which any lunatic asylum is erected, for a warrant for the conveyance of any lunatic, the justice may refuse it, stating his reasons.

§ 2. Provides, that if any person or persons shall think themselves aggrieved by such refusal of any justice as aforesaid, such person or persons may appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden in and for the county or place where the matter of appeal shall have arisen, the person or persons so appealing, having given to the person against whom such appeal shall be made, ten days' notice of his, her, or their intention to make such appeal; and the said justices at such sessions are hereby authorised and required to hear and determine the matter of such appeal in a summary way, and to make such determination as they shall think proper; and every such determination shall be final and conclusive to all intents and purposes whatsoever.

Persons aggrieved may appeal to the quarter sessions

§ 3. Provides, that every justice who shall have issued a warrant or warrants for the conveyance of any lunatic or insane person to such asylum, or who shall have refused to issue such warrant or warrants, on the application of the overseers of the poor of any parish, shall make regular returns to the next general quarter sessions of the peace to be holden in and for the county in which such parish shall be situate, of all cases brought before him, in which he shall have granted, or refused to grant, a warrant or warrants for such conveyance, stating in all cases of refusal

Justices to make returns to the quarter sessions of the cases brought before them.

51 G.3. c.79. the reasons for such refusal; and such returns shall be regularly filed and kept among the records of such court of general quarter sessions.

Overseers to produce certificate of a medical person of the state of the lunatic.

§ 4. "The overseers of the poor of any parish, on making their application to any justice of the peace for the conveyance of any lunatic or insane person, or dangerous idiot, as aforesaid, shall produce to such justice a certificate in writing from some medical person, of the state and degree of lunacy of the person on whose behalf such application shall be made; and it shall be further lawful for such justice to cause such lunatic, insane person, or dangerous idiot, to be visited by such medical person as he shall think fit, and to examine the said medical person upon oath, as to the state and degree of lunacy of such lunatic, insane person, or dangerous idiot, and to order such sum to be paid to such medical person for his attendance as may seem just and reasonable, and such sum shall be paid by the overseers of the poor of the parish making such application out of the money raised therein for the relief of the poor."

48 G.3. c.96. Justices committing lunatics under recited act, shall send them to the asylum of the county, or to house licensed under 14 G.3. c.49.

By stat. 48 *G.* 3. *c.* 96. § 19. after reciting stat. 17 *G.* 2. *c.* 5. § 20. (*ante*, p. 317.) it is enacted, "that in case there shall be a lunatic asylum established under the directions of this act, for the county or district of the united counties within which the parish to which any lunatic or mad person, apprehended by virtue of the above recited act, belongs, shall be situated, then such justices of the peace who shall by virtue of the above recited act issue any warrant for the confinement of such lunatic or mad person, shall in the body of such warrant so issued by them, direct and order that such lunatic or mad person shall be confined in such lunatic asylum and not elsewhere; but if no such lunatic asylum shall have been established, then and in such case it shall and may be lawful for such justices, if they think fit, to order and direct by such warrant that such lunatic or mad person shall be confined in any house duly licensed for the reception of lunatics under the authority of an act passed in the fourteenth year of the reign of his present majesty, intituled *An act for regulating madhouses*, although such house may not be situated within the county where the parish to which such lunatic or mad person belongs shall lie."

Where the legal settlement of lunatics cannot be discovered, the justices shall direct that they shall be sent to the lunatic asylum or some other place of confinement.

§ 20. Reciting that "whereas it sometimes happens, that by reason of the lunacy and madness of such persons the place of their legal settlement cannot be ascertained;" enacts, "that in case the place of the last legal settlement of any lunatic or mad person, apprehended by virtue of the above recited act, cannot be ascertained, then the justices who shall have caused such person to be apprehended shall by their said warrant direct such person to be confined in the lunatic asylum for the county or district of united counties within which such person shall have been apprehended, if any such asylum shall have been established, and not elsewhere; or if no such asylum shall have been established, in some house duly licensed for the reception of lunatics as aforesaid, or in some other secure place as directed by the said recited act; and if such person have not an estate to pay and satisfy the reasonable charges of removing, and of keeping, maintaining, and curing such person under the authority of the said recited act, then such charges shall be satisfied and paid by the treasurer of the county within which such person shall be apprehended, out

of the county rates, by order of two justices to him directed for that purpose." 48 G.3. c.96.

§ 21. Provides, that nothing in this act contained shall extend to render any lunatic asylum which may be provided under the authority of this act for the use of any county or united counties liable to the reception of lunatics or insane persons who may be chargeable to or apprehended in any city, town, precinct, parish, township, or place, situate within the limits of such county or united counties, but claiming exemption, and being exempt from contributing to the county rate, unless such city, town, precinct, parish, township, or place, shall have agreed to unite, and shall thereby have contributed to the expence of the same under the powers hereinbefore given in this act.

Providing that lunatic asylum shall not be liable to the reception of lunatics chargeable to any place which does not contribute to the expence.

§ 22. Reciting that "whereas in many parts of this kingdom lunatic asylums have been built and established, and others may hereafter be built and established, by voluntary contribution, for the reception and care of lunatics of all descriptions, contributing to the general charge of maintenance, medicines, and care, by certain weekly payments, according to the pecuniary circumstances of the parties respectively, or of their immediate connections, the excess of payments of the more affluent being applied to relieve and lower the payments of persons in more limited circumstances: and whereas it is fit and expedient to support and encourage such laudable institutions, and it may be of great advantage that asylums intended by this act to be erected for pauper lunatics should be united to or connected with such institutions by voluntary subscription," enacts, "that at any meeting of the justices of the peace to be held as aforesaid in any county for the purpose of considering and determining on the expediency and propriety of providing a lunatic asylum or house of reception for lunatics or other insane persons, if it shall appear to the major part of the justices so assembled, that it would be expedient to unite and join with any lunatic asylum so built and established by voluntary contribution, or so intended to be built and established, it shall be lawful for the justices so assembled to appoint a committee (in manner hereinbefore directed, § 3. to be appointed to treat with any adjoining county or counties) to treat with and enter into and subscribe an agreement with a committee of governors, directors, or subscribers to such voluntary institution, such committee being authorised and appointed by a majority of such subscribers, to be called by public advertisement as aforesaid, for the express purpose of making such appointment; and all provisions hereinbefore directed in regard to counties treating and agreeing with each other, shall be adhered to and be effectual, so far as the same will apply, or as the different circumstances of the two cases will admit: and the number of the committee of directors, governors, or subscribers, appointed by the subscribers, shall not exceed the number of the committee of justices to be appointed by the justices of the peace on the part of the county; and such committee of subscribers or the major part of them, shall be competent to enter into and subscribe any agreement, to all intents and purposes, as fully and effectually as any committee appointed under this act on the part of any county uniting to treat with any other county so uniting; provided always, no agreement so made by any committee of justices shall be valid and have

Encouraging lunatic asylums by establishing voluntary contributions.

48 G.3. c.96.

force on the part of the county, until the same shall have been submitted to and approved by the majority of the justices of the peace of the county assembled at the next ensuing general quarter sessions which shall be held after such agreement shall have been entered into."

Penalty on persons having lunatics in their care suffering them to go at large without an order from the justices.

§ 23. "All lunatics, insane persons, or dangerous idiots so committed to such asylum, shall be safely kept, and no such person shall be suffered to quit the said asylum or to be at large until the visiting justices or the greater part of them, shall order the discharge of such person, and shall signify the same in writing under their hands and seals; and if any officer, servant, or assistant in such asylum shall notwithstanding, through neglect or connivance, permit such person in any case to escape and be at large without such order as aforesaid, he or she shall for every such offence forfeit and pay a sum not exceeding 10*l.*, nor less than 40*s.*, to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of any two justices of the peace acting for the county within which such asylum shall be situated (which warrant such justices are hereby required to grant,) upon the confession of the party, or upon the information of any witness or witnesses upon oath (which oath such justices are hereby empowered to administer); and the said penalty, after the charges of recovering the same shall be deducted, shall be paid one moiety to the informer, and the other moiety to the treasurer of the said asylum, to be applied to the use of the same."

51 G.3. c.79. Medical superintendant of asylum to make returns of the state of persons entrusted to his care.

By stat. 51 *G.* 3. *c.* 79. § 5. The medical superintendant of every lunatic asylum shall make regular returns to the justices of the peace assembled at their general or quarter sessions, at least once in every year, of the state and condition of all persons committed to his care under the authority of the act of 48 *G.* 3. *c.* 96. and of this act, in order that the said justices may be enabled, from the inspection of such returns, and from the report of such medical superintendant, to direct the discharge of any persons from such asylum who may appear from such returns and report to be no longer fit objects to remain therein; and the said justices may at the same time issue their warrants (which they are hereby authorised to issue) for the admission of such other persons at their discretion, as may appear to be the fittest objects for immediate reception therein, out of the several persons on whose behalf application may have been made to any justice of the peace as aforesaid, and whose cases may have been regularly reported to the said general or quarter sessions.

The expence of removal of a pauper shall be paid by the parish in which the pauper shall be legally settled.

§ 6. On the regular discharge of any pauper from any such asylum the necessary expences attending the removal of such pauper shall be borne by the parish in which such pauper shall be legally settled, and such expences being allowed by two justices of the peace, acting in and for the county in which such parish shall be situated, shall be paid by the overseers of the poor of such parish out of the money raised therein for the relief of the poor.

48 G.3. c.96. Visiting justices to appoint officers.

By stat. 48 *G.* 3. *c.* 96. § 24. "In all cases where any such lunatic asylum shall have been established under the authority of this act, the visiting justices appointed as aforesaid to superintend the same or the major part of them, such major part not being fewer than

five, shall from time to time make such regulations as to them shall seem expedient for the management and conduct thereof, in which regulations shall be set forth the number and description of officers and servants to be kept, the duties to be required, and what salaries shall respectively be paid to them; and may appoint a treasurer, and such other officers and servants together with such number of assistants as they shall from time to time find necessary in proportion to the number of persons confined in such asylum, and may dismiss any such officer, servant, or assistant if they see occasion; and shall from time to time fix a certain weekly rate to be paid for each person confined in such asylum, which may be sufficient to defray the whole expence of the maintenance and care, medicines, and clothing requisite for such person, and the salaries of the officers and attendants: provided always, that such rate shall in no case exceed 14*s.* *per* week; and that the said visiting justices shall annually audit the accounts of the treasurer, and report the same to the next general quarter sessions of the peace to be holden for the counties at the expence of which such asylum has been established." 48 G.3. c.96.

55 G.3. c.46. Weekly rate for paupers may be increased by justices.

But by stat. 55 *G.* 3. *c.* 46. § 7. it is enacted, that it shall be lawful for the justices of the peace acting in and for any county at whose expence any lunatic asylum shall have been or shall be hereafter erected, or the major part of them assembled at any annual general or quarter sessions of the peace to be held for such county, or any adjournment thereof (such major part not being less than seven) to make such addition to such weekly rate as to them shall seem fit and necessary, and to make an order accordingly; which order shall be signed by the clerk of the peace, or his deputy, on behalf of the court, and forthwith published in some newspaper circulated within the county; and such additional rate shall be paid by the overseers of the poor of the parishes, townships or places, to which the lunatics in such asylum respectively belong, in the same manner as is provided by the said recited act with regard to the weekly rate from time to time to be fixed on by the visiting justices for the maintenance, medicine, clothing, and care of such lunatics.

Visiting justices may discharge lunatics.

And by § 9. After reciting, that whereas it may happen, that lunatics, by the provisions of the laws now in force, may be unnecessarily detained in any lunatic asylum after their recovery, during the intervals of meetings of the committee of visiting justices, or by reason of the non-attendance of a sufficient number of visiting justices, at any meeting of such committee; it is enacted, "that it shall be lawful for any two visiting justices at any time, by and with the advice and consent of the medical superintendent of such asylum, to discharge from such asylum any lunatic confined therein, whose perfect recovery may be certified by the said medical superintendent."

48 G.3. c.96. Visiting justices may direct repairs, &c.

By stat. 48 *G.* 3. *c.* 96. § 25. Such visiting justices may from time to time order all such repairs, or other expences as may be necessary for such lunatic asylums, and shall direct the same to be paid by an order upon the county treasurer, where such asylum shall be established by one county only, or shall apportion the same as afore-mentioned upon each county where such asylum is established for a district of united counties, and shall make an order upon the treasurer of each of the said united counties for the

48 G.3. c.96. payment of the proportion to be paid by such county; and such county treasurer shall immediately discharge the same out of any money which may then be in his hands, under the penalty of double such sum as he shall be directed to pay, to be recovered from him for the benefit of such asylum by action in any of his majesty's courts at *Westminster* by the treasurer of the said asylum.

Assessment to rates not to be encreased.

§ 26. In all future rates, taxes, and levies to be made for any parish or place in which any land or ground to be purchased for the purposes of this act shall be situate, such land or ground with any building to be erected thereon, shall not be assessed to any such rates, taxes, or levies, at a higher value or more improved rent than the same land or ground was at the time of such purchase; nor shall any building or buildings which, under this act, shall be erected on such land, be assessed to any house or window tax.

Buildings exempted from the window tax.

55 G.3. c.46. Committee of visiting justices of lunatic asylums to be elected annually.

By stat. 55 *G*.3. *c*.46. § 1. it is enacted, that in every case in which it shall have been or may hereafter be determined that a lunatic asylum shall be erected under the provisions of stat. 48 *G*.3. *c*.96. it shall be lawful for the justices of the peace acting in and for the county or united counties at whose expence such lunatic asylum shall have been or shall be erected, annually, at the *Michaelmas* general quarter sessions of the peace to be held for such county or counties respectively, or, in counties where annual general sessions have been fixed by law, at such annual general sessions to elect the members of the committee of visiting justices, for the building, erection and management of such asylum; and that it shall be lawful for the justices of the peace acting in and for such county or counties, or the major part of them, such major part not being less than seven, assembled at any annual general or quarter sessions of the peace to be held for such county or counties respectively, or any adjournment thereof, to fill up any vacancy in the number of visiting justices so appointed as aforesaid, that may have occurred by the death or resignation of any such visiting justice.

Vacancies to be filled up.

In case such election be neglected the visiting justices continuing to act deemed the committee.

§ 2. If the justices assembled at the *Michaelmas* general quarter sessions of the peace, or annual general session in any year, shall omit or neglect to make such election as aforesaid, or if the justices assembled at any annual general or quarter sessions, or any adjournment thereof, shall neglect or omit to fill up any vacancy that may have occurred as aforesaid, the committee of visiting justices before appointed, or such of them as shall continue to act, shall be deemed and taken to be the legal committee of visiting justices, for the building, erection, and management of such asylum, until the next *Michaelmas* general quarter sessions of the peace or annual general session.

Subscribers to lunatic asylums who may unite with any county or counties annually, may elect a committee of governors to act with committee of visiting justices.

§ 3. The subscribers to any lunatic asylum erected or to be erected by voluntary contributions, who may have united or who may hereafter unite with any county or counties, under the provisions of the said recited act, or the majority of such subscribers present at a general meeting to be held in the month of *October* in every year, of which due notice shall be given by public advertisement in some newspaper circulated within the county in which such lunatic asylum shall be situate, shall annually elect their committee of governors, directors or subscribers, for the

purpose of acting with the committee of visiting justices appointed or to be appointed on behalf of such county or counties, for the building, erection, and management of such asylum, in the manner prescribed by the said recited act; and it shall be lawful for the subscribers to any such asylum erected or to be erected by voluntary contributions as aforesaid, or the major part of them present at any general meeting to be called for that purpose, of which due notice shall be given as aforesaid, to fill up any vacancy in the number of such committee of governors, directors, or subscribers as aforesaid, that may have occurred by the death or resignation of any member of such committee. 55 G.3. c.46.

In case of neglect to make election, the governors continuing to act shall be deeme the committee.

§ 4. If no such annual meeting as aforesaid shall take place, or the subscribers assembled at such meeting shall fail to make such election as aforesaid, then the governors, directors, or subscribers, before appointed to act with the committee of visiting justices appointed or to be appointed by such county or counties, for the building, erection, and management of such asylum, or such of them as shall continue to act, shall be deemed and taken to be a legal committee, for the purpose of acting with such committee of justices as aforesaid, until the next general annual meeting of subscribers to such lunatic asylum.

Clerk may convene new meetings.

§ 5. If any committee of visiting justices, or of visiting justices united with any committee of governors or directors of or subscribers to any lunatic asylum erected or to be erected by voluntary contributions, shall neglect to adjourn any meeting held for the purposes of the said recited act, or where any unforeseen circumstance shall occur, rendering the meeting of such committee necessary within the period to which their meeting may have been adjourned, it shall be lawful for the clerk to such committee to convene a new meeting, by a circular letter to each member of such committee, informing him of the time and place of such meeting, ten days at least before the same shall be held.

5 G.4. c.71. No order to be made by visiting justices, unless the majo part of the jus tices present concur therein.

By stat. 5 *G.* 4. *c.* 71. intituled, *An Act to amend several acts passed for the better care and maintenance of lunatics, being paupers or criminals, in* England, dated 17th *June*, 1824, after reciting the titles of stats. 48 *G.* 3. *c.* 96., 51 *G.* 3. *c.* 79., 55 *G.* 3. *c.* 46., 56 *G.* 3. *c.* 117., and 59 *G.* 3. *c.* 127; and that it is expedient that the said acts should be amended, it is enacted, § 1, That no order or determination to be made at any meeting of the visiting justices which shall be held under or by virtue of the said recited acts, or any of them, or this act, shall be made or entered into, unless the major part of the justices present at such meeting shall concur therein, nor unless due notice of such meeting shall have been previously given according to the provisions of the said recited acts, or according to the rules and regulations made by the visiting justices; and that all acts, orders, and proceedings, which, by the said recited acts or any of them, or by this act, are directed to be had, made, done, or exercised by or before the said visiting justices, and all the powers and authorities by such acts or any of them, or by this act, vested in them generally, shall and may be had, made, done, and exercised by the major part of such justices present at the respective meetings to be held by virtue of the said recited acts and this act, the whole number present not being less than three; and all acts, orders, and proceedings, had, made,

5 G.4. c.71. done, or exercised by or before such three visiting justices, shall have the same force and effect, and be binding and conclusive on all parties, to all intents and purposes whatever, and as fully and effectually as if the same were had, made, done, or exercised by or before the major part of all the said visiting justices so appointed.

55 G.3. c.46. Justices to fix sums to be expended in purchase of lands, houses, &c. or in erecting buildings.

By stat. 55 *G.* 3. *c.* 46. § 6. In every case in which a lunatic asylum shall have been or shall hereafter be erected by any county under the provisions of the said recited act, it shall be lawful for the justices of the peace of such county, or the major part of them (such major part not being less than seven) assembled at any annual general or quarter sessions of the peace, or any adjournment thereof, to be held for such county, from time to time to fix and limit the sums which may be expended on the purchase of lands or houses, or in the erection of new buildings, or in the extension or alteration of existing buildings, for the purpose of such lunatic asylum, or the yards, outlets or courts thereunto belonging, as well on the first establishment of such lunatic asylum, as at any time during its continuance; and it shall not be lawful for the committee of visiting justices appointed for the building, erection, and management of such asylum, to enter into any contract or contracts for the purchase of lands or houses, or for the erection of new buildings, or for the extension or alteration of existing buildings, for the purpose of such lunatic asylum, or the yards, outlets, and courts thereunto belonging, at a sum or sums which may in the whole exceed the sums so from time to time limited and appointed by the justices assembled in sessions as aforesaid; and no contract so entered into by such visiting justices shall be held to be valid or legal.

Overseers of poor to return lists of all lunatics and idiots within their respective parishes, verified on oath, and accompanied with certificate from a medical practitioner.

§ 8. It shall be lawful for the justices of the peace acting in and for any county, at their several petty sessions, to issue their warrants to the overseers of the poor of the parishes, townships and places within their several subdivisions, to return true lists of all lunatics and dangerous idiots, being paupers, within their respective parishes, specifying the name, sex, and age, of each lunatic and idiot, and whether such lunatics be dangerous or otherwise; and for what length of time such lunatics shall have been disordered in their senses; and the overseers of the poor of the parishes aforesaid shall, on the receipt of such warrants, forthwith prepare and return such lists accordingly; and such lists shall be verified on oath before the justices of the peace at their petty sessions as aforesaid, and accompanied with a certificate from a medical practitioner, as to the state and condition of each lunatic or dangerous idiot; and any overseer of the poor to whom any such warrant shall have been directed and delivered, who shall refuse or neglect to prepare such list, or to return the same at the time and place by such warrant fixed, with such certificate as aforesaid, or to verify such list on oath, shall for every such offence be subject to such fine as overseers of the poor and other parish and peace officers are subject for neglect of duty, under

33 G.3. c.55. Lists to be laid before general quarter sessions.

stat. 33 *G.* 3. *c.* 55., and such fine shall be imposed, levied, and enforced in the manner in the said act directed; and the justices aforesaid shall cause the said lists to be forthwith transmitted to the clerk of the peace, or his deputy, to be by him laid before the justices of the peace acting in and for such county, at their

next general quarter sessions of the peace or general annual session; and it shall be lawful for such overseers of the poor to defray the necessary expences of the examination of such lunatics or dangerous idiots, by a medical practitioner, out of the poor rates of the parishes to which such lunatics or idiots respectively belong; or where the legal settlement of any such lunatic or idiot shall not have been ascertained, then out of the poor rates of the parish in which such lunatic or idiot shall reside.

55 G.3. c.46.

Expences of examination of lunatics, &c. to be paid by parishes.

§ 12. Whenever and so often as it shall appear to the justices of the peace acting in and for any county or counties at whose expence any lunatic asylum shall have been erected, or the major part of them, such major part not being less than seven, assembled at any general quarter sessions of the peace or general annual session, that the space within such asylum is more than sufficient for the accommodation of lunatics, being paupers, within the district or districts for which such asylum shall have been built, it shall and may be lawful for such justices so assembled to make order for the admission of so many lunatic patients as to them shall seem expedient, not being pauper or criminal, or being paupers but belonging to any other county, or to any parish, township or place within the county or counties by which such asylum shall have been erected, which may be exempt from contributing to the county rate of such county or counties, and which shall not have united with such county or counties, or contributed to the expence of such erection, under the conditions and regulations following, that is to say, that no such lunatic patient shall be admitted into such asylum without an order signed by one visiting justice, directed to the governor or superintendent of such lunatic asylum, nor without the certificate in writing of a regular practitioner in medicine, certifying the lunacy of such patient, nor without an undertaking signed by two substantial householders, or the minister and one of the churchwardens, or one of the overseers of the poor of the parish or place within which such lunatic shall be resident at the period of application made for the admission of such patient into such asylum, for the due payment of the weekly allowance and other expences contingent upon the maintenance and care of such lunatic, during the time of his or her continuance in such asylum as well as for the removal of such lunatic from such asylum, within three days after due notice given in writing by the governor or superintendent of such asylum, by the order of one or more visiting justice of such asylum, under the penalty of fifty pounds, to be recovered and applied as other penalties are directed to be recovered and applied by virtue of this or any other acts of parliament, passed for the building and maintaining of asylums for the reception of pauper lunatics: provided always, that the weekly provision for the maintenance of such patients, not being paupers, shall be fixed by the visiting justices, at such rate, as shall in their judgment be sufficient to cover every expence liable to be incurred for or on account of each such patient respectively; and that in no case such weekly provision shall be fixed at a sum less than a sum exceeding by one-third the weekly sum paid at such time by the parishes within such district or districts, for the maintenance of the patients thereto belonging respectively, together with such extra-charge for clothing and

When any asylum can accommodate more lunatics, magistrates may order an addition under certain regulations

55 G.3. c.46. medicine, as may be incurred during the continuance of such patient in such asylum, under the sanction of the visiting justices thereof.

51 G.3. c.79. Bastards of lunatics to have the legal settlement of the mother.

By stat. 51 *G.* 3. *c.* 79. § 7. No bastard child which shall be born of any lunatic, insane person, or dangerous idiot, in any such asylum, shall thereby gain a settlement in the parish in which such asylum shall be situated; but the place of the legal settlement of any such child so born as aforesaid shall be in the parish where the mother of such child was last legally settled.

5 G.4. c.71. Provisions to extend to ridings, cities, and towns.

By stat. 5 *G.* 4. c. 71. §6. All provisions, directions, clauses, matters, and things whatever in this act or any of the said recited acts contained (which see p. 331.) relating to counties, shall extend to all ridings, divisions, cities, towns, liberties, and places possessing separate jurisdictions; and if relating to parishes, shall extend to all vills, townships, and places maintaining their own poor, as fully and amply as if they were severally and respectively repeated in every such provision, direction, and clause, and with relation to any such matter or thing. And see stat. 48 *G.* 3. *c.* 96. § 28. same provision as to *that act* only.

Schedule, (No. 1.)

48 G. 3. c. 96. § 4.

Form of Agreement for uniting the Counties or Ridings, &c. [*as the case may be*] of *A. B.* and *C.*; for the Purpose of providing a Lunatic Asylum or House for the Reception of Lunatics and Insane Persons, pursuant to the Statute of the forty-eighth year of King *George* the Third.

IT is agreed this ——— day of ——— by and between the committees of justices of the peace severally appointed for the counties [or *ridings, cities, &c.* as the case may be] *of* A. B. C. *to treat for the uniting of the said counties for the purposes of an act (for the better care and maintenance of paupers and criminal lunatics) passed in the forty-eighth year of his majesty king* George *the third, that the said counties,* [*&c.* as the case may be] *shall from henceforth be united for the purposes of the said act, and adopt in all respects the provisions, rules, orders, and regulations, and comply with all the requisites prescribed by the said act for counties uniting for those purposes; and that a lunatic asylum or house for the reception of lunatics and other insane persons, with all necessary buildings, courts, yards, and outlets, shall be immediately provided at or near ———, and properly fitted up and accommodated for the purposes mentioned in the said act; and that the necessary expences attending upon the providing, building, fitting up, repairs, and maintenance of the said lunatic asylum, shall be defrayed by the said counties so united, in the following proportions, that is to say:*

The county of A. *four-ninths of the said expences.*
The county of B. *three-ninths of the same.*
The county of C. *two-ninths of the same* [or as the case may be.]

And we do further agree, that the committee of visiting justices to superintend the building, erection, and management of the said lunatic asylum, shall consist of eighteen, [*or,* as the case may be;]

whereof the justices of the peace for the said county of A. *shall appoint eight, the justices of the peace for the county of* B. *shall appoint six, and the justices of the peace for the county of* C. *shall appoint four: and hereunto we, the undersigned justices of the peace, being the major part of each of the said committees of justices for the said several counties, do, on the part and behalf of the said counties, set our hands and seals this* ——— *day of* ——— *in the year* ———. 48 G.3. c.96.

Schedule (No. 2.)

48 G. 3. c. 96. § 8.

Form of Mortgage and Charge upon the County Rates for securing the Money borrowed.

WE A. B. *one of his majesty's justices of the peace and chairman of the court of quarter sessions of the peace for the county, &c. of* ——— [as the case shall be] *holden at* ——— *the* ——— *day of* ———, C. D. *and* E. F. *esquires, two other of his majesty's justices of the peace acting for the said county, &c. and assembled in the said court, in pursuance of the powers to us given by an act psased in the forty-eighth year of the reign of his majesty king* George *the third, intituled,* [*&c.* here insert the title of the act] *do hereby in open court mortgage and charge all the rates to be raised within the said county,* [*&c.* as the case shall be] *under the description of county rates by the laws now in being, with the payment of the sum of* ——— *which* G. H. *of* ——— *hath proposed and agreed to lend, and hath now actually advanced and paid towards defraying the expences of purchasing lands for building, repairing,* [*&c.* as the case shall be] *the lunatic asylum for the said county,* [*&c.* or *the united counties of, &c.* as the case may be;] *and we do hereby confirm and establish the same unto the said* G. H. *his executors, administrators, and assigns, for securing the repayment of the said sum of* ——— *and interest for the same, after the rate of* ——— per centum per annum, *and do order the treasurer for such county, &c. or other person* [as the case may be] *to pay the interest of the said sum of* ——— *half yearly, as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said act.*

By stat. 59 *G.* 3. *c.* 127. intituled "*An act for making provision for the better care of pauper lunatics in* England;" after reciting, "that it is expedient that further provision should be made for the care of pauper lunatics in *England,* who may be chargeable to any parish;" it is enacted, "that upon its being made known to two or more justices of the peace of any county, that a poor person chargeable to any parish or place within any of the said counties is deemed or taken to be lunatic or insane, or a mischievous idiot, it shall be lawful for the said justices, by an order under their hands and seals, if they shall so think fit, to require the overseers of the poor of the said parish or place to bring the said poor person before them, or some other justices of the peace of the said county, at such time and place as shall be appointed by the said order; and the said two justices are hereby authorised to call to their assistance a medical person, at the charge of the said parish or place; and if upon view and examination of the said poor person, or from other proof, the said justices shall

59 G.3 c.127.

In cases where insane persons are chargeable to the parish, the justices shall direct the overseers to convey them to some licensed house for lunatics.

59 G.3. c.127. be satisfied that such poor person is lunatic, insane, or a mischievous idiot, it shall be lawful for the said two justices, by an order under their hands and seals, directed to the said overseers of the
A. poor, according to the form in the schedule (A) annexed to this act, to cause the said poor person to be conveyed to and placed in some lunatic asylum, in all cases where such asylum shall have
48 G.3. c.96. been established under the directions of the act 48 *G.* 3. *c.* 96. for the county or district of united counties within which the parish or place to which such poor person belongs shall be situated; but if no such lunatic asylum shall have been established, such justices shall then direct such poor person to be conveyed to and placed in some house duly licensed for the reception of insane persons; and it shall be lawful for the said two justices, or for any other two justices of the peace acting in the division of the said county wherein the said parish or place is situated, from time to time, as occasion may require, to make order on the overseers of such parish or place for the payment of all reasonable charges of conveying such poor person to such lunatic asylum or licensed house, and if such poor person shall be conveyed to a lunatic asylum, for the payment of such weekly sum to the treasurer of such asylum, as shall be from time to time fixed upon by the visiting justices of such asylum, under the authority of the said recited act, or if such poor person shall be conveyed to such licensed house, for the payment of such weekly or monthly sum to the keeper of such licensed house, for the maintenance, medicine, clothing, and care of such poor person as such keeper shall be willing to accept, and as shall appear to the said justices to be a reasonable charge in that behalf; and the said overseers of the poor shall not remove such poor person from the said house without an order for that purpose, made by two justices of the peace for the county, after due enquiry into the circumstances of the case, unless such person shall have been discharged as cured: provided always, that the overseer or overseers of such parish or place so conveying such insane person to such asylum or licensed house as aforesaid, shall and is hereby required to deliver a certificate from the medical person so called to the assistance of the justices as aforesaid (which certificate such medical person is hereby required to give,
B. according to the form in schedule (B) annexed to this act to the keeper of such asylum or licensed house)."

5 G.4. c.71. Visiting justices may fix weekly rate for maintenance of insane persons, and give order for recovery thereof.

By stat. 5 *G.* 4. *c.* 71. § 5. reciting, That whereas it is by the said recited acts (see *ante* p. 331.) enacted, that the visiting justices shall from time to time fix a certain weekly rate to be paid for each person confined in every such asylum as is authorised by the said recited acts to be established, which rate may be sufficient to defray the whole expence of the maintenance and care, medicines and clothing requisite for such person, and the salaries of the officers and attendants: And whereas it is by stats. 48 *G.* 3. *c.* 96. and 59 *G.* 3. *c.* 127. enacted, that the justices acting for the division of the county where such parish for which any pauper lunatic has been directed and conveyed to such lunatic asylum shall be situated, shall from time to time make order on the overseers of such parish, for the payment of all reasonable charges of conveying such poor person to such asylum, and for the weekly payment to the treasurer thereof of such sums as the visiting justices of such asylum shall have fixed: And whereas it is expedient that

better provision should be made for the recovery of such sums;" it is enacted, That if the overseers for the time being of such parish, upon whom such order shall be made, shall for the space of 20 days after due notice of such order, refuse or neglect to pay the sums so ordered to be paid, the same shall be recovered by distress and sale of the goods of such overseers so refusing or neglecting, or of any of them, by warrant under the hands and seals of any two justices of any such respective counties.

5 G. 4. c. 71.

Distraining overseers' goods.

§ 2. "This act declared to be a public act."

§ 3. "If any overseer of the poor of any parish or place to which any lunatic or insane person shall be chargeable, shall, for the space of seven days, wilfully neglect or delay to give information of the state of such person to some justice of the peace acting within the division of the county within which the said parish or place is situate, he shall for every such offence forfeit and pay a sum of money not exceeding 10*l.* nor less than 40*s.* (half to the informer and half to the poor of the said parish or place), to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of any two justices of the peace for the county within which such parish or place is situate."

59 G. 3. c. 127. Penalty on overseers of the poor neglecting to give information to a justice as to the state of the lunatic.

Stat. 5 *G.*4. *c.*71. § 3. enacts, "That in any case in which a lunatic or dangerous idiot, whose settlement, by reason of the lunacy of such person, cannot be ascertained, shall be by the order of two justices confined in any lunatic asylum, it shall and may be lawful for any two justices acting in and for the county in which such asylum shall be situated, at any time to examine into the legal settlement of such lunatic or dangerous idiot; and if satisfactory evidence can be obtained as to such settlement, it shall and may be lawful for such justices to adjudge the last legal settlement of such lunatic to be in such parish or place as may on such evidence appear to him to be the place of such legal settlement; and forthwith to make an order on the overseers of the poor of such parish or place to pay such weekly sum to the treasurer of such asylum as shall have been fixed by the visiting justices as a fit rate for the maintenance, medicine, clothing, and care of lunatics confined in such asylum."

5 G. 4. c. 71. Two justices may make an order on the overseers of the parish where the settlement of any lunatic is adjudged to be, for a weekly sum for such lunatic's maintenance.

§ 4. Provided, "That if the overseers of the poor of any parish or place shall feel themselves aggrieved by any such order as aforesaid, it shall be lawful for them to appeal, at the next general quarter sessions of the peace for the county in which such lunatic asylum shall be situated; and the justices at such sessions shall hear and determine the matter of such appeal, as in cases of appeals against orders of removal, and award such costs to either party as to them shall seem just and reasonable; and in case the settlement of any lunatic respecting whom such order shall have been made, shall be then and there determined not to be in the parish or place on whom such order shall have been made, then such costs shall be paid by the treasurer of the county or united counties at whose expence such lunatic asylum shall have been erected."

Appeal may be made to quarter sessions.

Schedule (A.) Stat. 59 *G.* 3. *c.* 127.

Form of Warrant.

WHEREAS it appears to us, two of H. M.'s justices of the peace for the county of ——— *having called to our assistance* A. B., *a medical person, that* C. D., *chargeable to the parish of* I. *in the said county, is [lunatic, insane, or a dangerous idiot,* as the case may be] *you are hereby directed to cause the said* C. D. *to be conveyed to the lunatic asylum at* E., *established under an act passed in the forty-eighth year of* George *the third, intituled* An act for the better care and maintenance of lunatics being paupers or criminals in *England, in order that proper means may be there used for the cure of the said* C. D.; *and you are hereby ordered to pay to the treasurer of the said asylum such weekly sum for the maintenance and care of the said* C. D. *as shall be from time to time fixed upon by the visiting justices of the said asylum, under the authority of the said act; or to the house of* E. F., *situate at* G. *in the county of* K., *the said house being a house duly licensed for the reception of lunatics; and you are hereby ordered to pay to the said* E. F. *the [weekly or monthly] sum of* ——— *for the maintenance, medicine, clothing, and care of the said* C. D., *which sum the said* E. F. *is willing to accept, and which appears to us to be a reasonable charge in that behalf.*

Given under our hands and seals, this —— *day of* ——.

L. M.
N. O.

To the overseers of the poor of the parish of I.

Schedule (B.) Stat. 59 *G.* 3. *c.* 127.

Form of Certificate.

I DO hereby certify, that by the directions of L. M. *and* N. O. *esquires, justices of the peace for the county of* H., *I have personally examined* C. D., *and that the said* C. D. *appears to me to be of insane mind.*

Dated this —— *day of* ——.

A. B. (*physician, surgeon,* or *apothecary,* as the case may be) *resident at* R.

A. (A) Warrant to secure a Lunatic.

County of ——— } To the constables, churchwardens, and overseers of the poor of ———.

WHEREAS it hath been proved before us ———, *two of the justices of our lord the king, assigned to keep the peace within the said county, upon the oaths of* A. W. *and* B. W., *both of the parish of* ——— *in the county aforesaid, gentlemen, that A. L., late of* ———, *frequently goeth at large in the said parish of* ———, *and that he the said* A. L. *is by lunacy so far disordered in his senses, that he is dangerous to be permitted to go abroad; and that his legal settlement is in the parish of* ———. *These are therefore to authorise and require you, and every of you, to cause the said* A. L. *to be apprehended and kept safely locked up in the house of* A. K. *at* ———, *in the said county, the said* A. K. *being willing*

to keep and entertain him the said A. L. *for a reasonable allowance in that behalf, and the said house being a secure place: And the said* A. L. *is to be kept so locked up only so long as such lunacy or disorder shall continue, and no longer. Given under our hands and seals at ——— in the said county, this ——— day of ———,* 18——.

(B) Order to charge a Lunatic's Estate with his Keeping, Maintenance and Cure. B.

County of ——— } To the churchwardens and overseers of the poor of the parish of ——— in the said county.

WHEREAS A. L., *late of ——— in the said county, being a person lunatic, and so far disordered in his senses, that he was and is dangerous to be permitted to go abroad, hath, by warrant under the hands and seals of us ———, two of H. M.'s justices of the peace for the said county, been apprehended and safely locked up in the house of* A. K., *at ——— in the said county, the said house being a secure place for that purpose; and whereas it appears to us, on the oaths of* C. W. *churchwarden, and* O. P. *overseer of the poor of ———, that they the said churchwarden and overseer have reasonably expended the sum of ——— in removing the said* A. L. *to the said house of the said* A. K., *and in keeping, maintaining, and curing him there; These are therefore to authorise and command you, to seize and sell so much of the goods and chattels, and to receive so much of the annual rents of the lands and tenements of him the said* A. L. *within your said parish, as shall be necessary to pay the same; And for what shall be so seized, sold, or received by you, you are to account at the next quarter sessions of the peace to be holden for the said county. Given under our hands and seals at ——— in the said county, the ——— day of ———.*

(C.) Warrant to convey a Lunatic to an Asylum, pursuant to Stat. 48 G. 3. c. 96. § 17. C.

County of ——— } To the constables and overseers of the poor of the ——— of ——— and to *J. G.* the governor of the *General Lunatic Asylum* at ——— ——— in the said county.

WHEREAS application has been made to us J. P. *and* C. P. *esquires, two of his majesty's justices of the peace acting in and for the county of ———, by the overseers of the poor of the ——— of ———, to issue our warrant for the conveyance of* A. L. *a lunatic, who is chargeable to the said ——— of ——— to the* General Lunatic Asylum *at ———, erected under and by virtue of an act passed in the forty-eighth year of the reign of* George *the third, intituled* An act for the better care and maintenance of lunatics, being paupers or criminals, in *England. These are therefore to authorise and require you, and every of you, the said constables and overseers, to convey the said* A. L. *to the said* Lunatic Asylum, *and there to deliver him into the custody of* J. G. *the governor thereof; and you the said* J. G. *are hereby authorised and required to receive the said* A. L. *within the said asylum, and him there safely keep*

until he shall be duly discharged, according to the provisions of the statutes in such case made and provided. Given under our hands and seals this ———, *day of* ———, *in the year of our Lord* 18—.

D. (D.) Order for Payment of a Weekly Sum for the Maintenance of a Lunatic Vagrant, pursuant to Stat. 48 G. 3. c. 96. § 17.

County of ——— } To the churchwardens and overseers of the poor of the ——— of ——— in the said county of ———.

WHEREAS we, J. P. *and* C. P. *esquires, two of his majesty's justices of the peace acting in and for the county of* ———, *by virtue of the powers vested in us by an act passed in the forty-eighth year of the reign of king* George *the third, intituled* "An act for the better care and maintenance of lunatics, being paupers or criminals, in *England; have issued our warrant, for the conveyance of* A. L. *a lunatic, belonging to the* ——— *of* ———, *to the* General Lunatic Asylum at ———, *erected under and by virtue of the said act. These are therefore to require you, the churchwardens and overseers of the poor of the said* ———, *to pay to the treasurer or treasurers of the said asylum, the sum of* ——— *per week, or such other weekly sum as shall from time to time be fixed upon by the visiting justices of the said asylum, as a fit rate for the maintenance, medicine, clothing, and care of the said* A. L. *Given under our hands and seals this* ——— *day of* ———, *in the year of our Lord* 18—.

Madmen. See Lunatics.

Maim.

[22 & 23 C. 2. c. 1.—43 *G.* 3. c. 58.]

MAIM is such a hurt of any part of a man's body, whereby he is rendered less able in fighting either to defend himself, or annoy his adversary: for the members of every subject are under the safeguard and protection of the law, to the end a man may serve his king and country when occasion shall be offered. 1 *Haw.* c. 44. § 1.—1 *East's P. C.* 393.

A person who even maims himself, or procures another to maim him, that he may have more colour to beg; or disables himself to prevent being pressed for a soldier; is subject to fine and imprisonment at common law; and so is the party by whom it was effected at the other's desire. *Wright's case, Leicester Ass.* 1 *Jac.* 1. *Co. Lit.* 127. *a.* 1 *Hale,* 412. 1 *East's P. C.* 396.

The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye or foretooth, or castrating him, are said to be maims: but the cutting off his ear, or nose, were not esteemed maims at the common law, because they do not weaken but only disfigure him. 1 *Haw. c.* 44. § 2.

It is said, anciently castration was punished with death, and other maims with the loss of member for member: but afterwards

no maim was punished in any case with the loss of life or member, but only with fine and imprisonment. 1 *Haw. c.* 44. § 2.

But now by stat. 22 & 23 *C.* 2. *c.* 1. § 7. (commonly called the *Coventry* act, from the circumstance of its having passed on occasion of Sir John *Coventry*'s being assaulted in the street, and his nose slit, by persons who lay in wait for him for that purpose, in revenge, as was supposed, for some obnoxious words uttered by him in parliament) (*a*), 1 *East's P. C.* 394. it is enacted, "that if any person or persons shall, on purpose and of malice forethought, by lying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject, with intention in so doing to maim or disfigure him in any the manners before mentioned; that then the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to the offence as aforesaid, shall be declared to be felons, and suffer death as in cases of felony without benefit of clergy." But not to work corruption of blood, forfeiture of dower, or of the lands or goods of the offender.

22 & 23 C. 2. c. 1.

Malicious maiming made felony.

If a man attack another with intent to murder him, and he does not murder, but only maim him; the offence is nevertheless within the statute. 1 *Haw. c.* 44. § 6.

Of malice aforethought.] It is not necessary that the malicious intention should be conceived against any particular individual. If it be against all persons who may happen to come within the scope of the perpetrator's design, the particular mischief done to any one will be connected with the general malignant intent, and so the case will fall within the statute. 2 *Haw. c.* 23. § 16. and see *Carrol*'s case, *infra*.

Lying in wait.] To bring an offender within the *Coventry* act there must be proof of a deliberate and premeditated design to do a personal injury of the sort described to another; and it must appear, that the mischief was done in the manner described therein, that is, on purpose and of malice aforethought, and by lying in wait for that purpose. 1 *East's P. C.* 394.

B. Carrol and *W. King* were indicted, the one for slitting the nose of Mr. *Kirby*, the other for being present, aiding and abetting. The evidence was, that Mr. *Kirby*, about ten at night, in the *Strand*, detected one *Byfield*, a boy, picking his pocket, seized him, and was carrying him along the street. *Carrol*, who was lurking thereabouts, came up to them, and after walking for some little time, sometimes before and sometimes after them, struck the prosecutor a violent blow across the face with a large knife, saying, "Damn you, Sir, let the boy go." *Byfield* and *Matthews*, two boys, deposed that the prisoners and they had agreed to go out to pick pockets together: the boys were to rob, and if detected or seised, the prisoners were to stab or wound the person in order to rescue them; and *Carrol* had agreed that he would either stab or cut off the nose of the first man that molested them, and actually lay in wait and followed the boys for that purpose above two hours and a half before they met Mr. *Kirby*. This was held a "lying in wait" within the

(*a*) See 4 *Blac. Com.* 207. And for the history of this transaction, see *Burnet's History of his own Time*, Vol. I. p. 269. and 7 *Hume's Hist.* 468, 469.

statute. *Rex* v. *Carrol and King, O.B. July* 1765. 1 *East's P. C.* 394: 1 *Leach*, 55.

In *Mills's* case, *O. B. April* 1783. 1 *East's P. C.* 397. 1 *Leach*, 259. the circumstances were these: the prisoner with a gang of thieves beset the prosecutor coming down *Holborn Hill* with his master's cart loaded; and after assaulting him and giving him several severe wounds in different parts of his body, while he was endeavouring to escape, several of them cried out, "Damn you, where are your knives?" upon which the prisoner made a stroke at him with a large knife, and gave a dreadful wound from ear to ear, which divided his nose and otherwise injured him. The cart, however, was not robbed, and no other motive could be assigned for this cruel outrage than that the prosecutor had detected and beaten off some thieves who had attempted to rob his cart the preceding evening near the same place. *Eyre* C. B. left it to the jury to consider whether the fact was deliberately and intentionally done by lying in wait for that purpose, on the account suggested, or from any other malicious and deliberate motive, or whether it were a sudden violent impulse of rage, not in the previous contemplation of the parties; in which latter case he said it was not within the statute: but he laid stress on the expression used by some of the gang, "Where are your knives?" as explanatory of a previous design to do such a mischief. The jury found the prisoner guilty.

But if the mischief be done in a sudden attack, without any premeditated design against the person, there will not be a lying in wait within the statute. Thus, where the prisoner was stealing turnips in a field, and, being found by the servant of the owner of the field in the very act of taking them, struck the servant immediately with a sharp instrument, and slit his nose; it was holden that this was not an offence within the statute; all the judges holding that there was not sufficient evidence of a lying in wait; and some of them considering that the having the instrument and using it, was with intent to escape, and not to murder or maim. 1 *Russ.* 848. *Tickner's case, reserved for the opinion of the twelve judges, from the O. B. Sess.* 1778. 1 *Leach*, 187. 1 *East's P. C.* 398.

And the "*lying in wait*" must be with the view, and for the purpose, described in the statute. Thus, where the commander of a press-gang maimed a man, whom he casually met, and who resisted being pressed, and against whom it appeared that he had an old grudge, though the jury found that the wounding was of malice aforethought, yet the judges, upon a reference to them, were of opinion that there was no lying in wait, so as to bring the offence within the intent and purview of the statute. 1 *Russ.* 848. *R.* v. *Mackey and Arrigoni, Kingston Sp. Ass.* 1778. 1 *East's P. C.* 399.

Slit the nose.] In *Carrol's* case, (*ante* p. 341.) it was decided that a large transverse wound across the nose, so wide and deep as to render the bone visible, is a slitting of the nose within the statute, although the nostril be not thereby perforated.

With intention to maim or disfigure.] Mr. *Coke*, a gentleman of *Suffolk*, and one *Woodburn*, a labourer, were indicted in 1722 on this act. The latter gave the prosecutor several blows on the head with a sharp bill or hook, one of which slit the nose, the

former being present, &c.; and then they left him, fancying he was dead: the prosecutor, however, recovered. The prisoners in their defence insisted that their intent was to *murder Crisp*, the prosecutor, and not to maim him, and therefore that they were not within the statute. But Ld. C. J. *King* said, that if one man attack another to murder him with such an instrument as a hook, which cannot but endanger the disfiguring him, and in such attack happen not to kill but only to disfigure him, he may be indicted on this statute; and it shall be left to the jury to consider whether it were not a design to murder by disfiguring, and consequently a malicious intent to disfigure as well as to murder. Accordingly the jury found them guilty of such previous intent to disfigure, in order to effect their principal intent to murder; and they were both condemned and executed. *Rex* v. *Coke and Woodburn*, 16 *Howell's St. Tri.* 54. 1 *East's P. C.* 400. 4 *Blac. Com.* 207.

But to bring the case within the act there must be an intention (to be collected from circumstances) to maim or disfigure: for if the intent be of a different and less atrocious kind, it is not within the act, though the party be in fact maimed.

A horrible practice having of late years prevailed among pick-pockets and others, of lacerating those who were the objects of depredation or resentment, and the laws being found inadequate to reach and efficiently correct the evil, the legislature interfered; and by stat. 43 G. 3. *c.* 58. (commonly called Ld. *Ellenborough's* act) after reciting that "divers cruel and barbarous outrages had been of late wickedly and wantonly committed in divers parts of *England* and *Ireland*, upon the persons of H. M.'s subjects, either with an intent to murder, or to rob, or to maim, disfigure, or disable, or to do other grievous bodily harm to such subjects," and that "the provisions by law made for the prevention of such offences had been found ineffectual for that purpose," it is enacted, "that if any person or persons shall wilfully, maliciously, and unlawfully stab or cut any of H. M.'s subjects, with intent in so doing, or by means thereof, to murder, or rob, or to maim, disfigure, or disable such H. M.'s subject or subjects, or with intent to do some other grievous bodily harm, to such H. M.'s subject or subjects, or with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person or persons so stabbing or cutting, or the lawful apprehension and detainer of any of his, her, or their accomplices for any offences for which he, she, or they may respectively be liable by law to be apprehended, imprisoned, or detained, that then and in every such case the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be and are hereby declared to be felons, and shall suffer death as in cases of felony without benefit of clergy." "Provided, that in case it appear on the trial of any person or persons indicted for the wilfully, maliciously, and unlawfully stabbing or cutting any of H. M.'s subjects with such intent as aforesaid, that such acts of stabbing or cutting were committed under such circumstances, as that if death had ensued therefrom the same would not in law have amounted to the crime of murder, that then and in every such case the person or persons so indicted shall be deemed and taken to be not guilty of the felonies whereof they shall be so indicted, but be thereof acquitted."

43 G. 3. c. 58.

Wilfully to stab, or cut, with intent to murder, rob, or maim any of H. M.'s subjects, is felony without clergy, &c.

If the maim come not within any of the descriptions in either of these acts, yet it is indictable at the common law, and may be punished by fine and imprisonment; or the party injured may bring an action of trespass; in which he shall recover damages. 2 *Haw. c.*23. § 16. 22. 4 *Blac. Com.* 206.

It is not every trifling assault that will justify a grievous and immediate mayhem, such as cutting off a leg or hand, or biting off a joint of a man's finger, unless it happened accidentally, without any cruel and malignant intention, or after the blood was heated in the scuffle: but it must appear that the assault was in some degree proportionable to the mayhem. 1 *East's P. C.* 402.

It doth not seem that in maiming there can be accessaries after the fact. 2 *Haw. c.*29. § 4. 5.

As to the construction of the words "cut or stab," in this statute, and with what instrument, and with what intent and under what circumstances such acts must be committed, see title, **Black Act**, Vol. I. pages 371 – 379.

For maiming of Cattle, see title **Cattle**. Vol. I.

Mainprise. See **Bail.**

Maintenance.

BUYING of titles belongeth not to this place, but is treated of under a title of its own.

§ I. *Of Maintenance in general.*
[1 Ed. 3. st. 2. c. 14. — 20 Ed. 3. c. 4. — 1 R. 2. c. 4. — 32 H. 8. c. 9.]

II. *Of Champerty in particular.*
[3 Ed. 1. c. 25. — 28 Ed. 1. c. 11. — 33 Ed. 1. st. 2. — 33 Ed. 1. st. 3. — 1 R. 2. c. 9. — 31 El. c. 5.]

III. *Of Embracery in particular.*
[38 Ed. 3. st. 1. c. 12. — 32 H. 8. c. 9.]

I. Of Maintenance in general.

Maintenance, what.

Maintenance (*manu tenere*) *is an unlawful taking in hand or upholding of quarrels or suits to the disturbance or hindrance of common right.* 1 *Haw. c.*83. § 1. 4 *Blac. Com.* 134. 1 *Russ.* 266.

And it is twofold; technically termed *ruralis et curialis.*

In the country.

One in the *country;* as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtlety; or where one stirs up quarrels, and suits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not: but it is said not to be actionable. *Id.* § 1. 2.

In courts of justice.

Another in the *courts of justice:* where one officiously intermeddles in a suit depending in any such court, which no way be-

longs to him, by assisting either party with money or otherwise in the prosecution or defence of any such suit. 1 *Haw. c.*83. § 1. 2.

Of this second kind of maintenance, there are three species:

First, where one maintains another, without any contract to have part of the thing in suit; which generally goes under the common name of *maintenance*.

Secondly, where one maintains one side to have part of the thing in suit: which is called *champerty*.

Thirdly, where one laboureth a jury; which is called *embracery*. *Id.* § 3.

But it seemeth to be agreed, that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, by the same title, they may maintain one another in a suit relating to the same. *Id.* § 18.

Also, that whoever is any way of kin or affinity to the party may counsel and assist him, but that he cannot justify the laying out any of his own money in the cause unless he be either father, son, or heir apparent. (*a*) *Id.* § 20.

Also, that any one in charity may lawfully give money to a poor man, to enable him to carry on his suit. *Id.* § 26. 1 *Russ.* 270. 4 *Blac. Com.* 135.

It seemeth that all maintenance is not only *malum prohibitum* by statute, but is also *malum in se*, and strictly prohibited by the common law, as having a manifest tendency to oppression; and therefore it is said that all offenders of this kind are not only liable to an action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiff, but also that they may be indicted as offenders against public justice and adjudged thereupon to such fine and imprisonment as shall be agreeable to the circumstances of the offence. Also it seemeth that a court of record may commit a man for an act of maintenance done in the face of the court. 2 *Inst.* 212. 1 *Haw. c.* 83. § 36. How punishable by the common law.

By stat. 1 Ed. 3. st. 2. c. 14. *No person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.* How punishable by statute.

By stat. 20 Ed. 3. c. 4. *None shall take in hand quarrels other than their own, nor the same maintain, by them nor by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in disturbance of law and hindrance of right.* 20 Ed. 3. c. 4.

By stat. 1 R. 2. c. 4. *None shall take or sustain any quarrel by maintenance in the country, nor elsewhere, on pain, if he is a great officer, as the king by advice of the lords shall ordain: if he is a lesser officer, he shall forfeit his office, and be imprisoned and ransomed at the king's will: and all other persons, on pain of imprisonment, and ransom at the king's will.* 1 R. 2. c. 4.

And by stat. 32 H. 8. c. 9. § 3. *No person shall unlawfully maintain or procure any unlawful maintenance in any action, demand,* 32 H. 8. c. 9.

(*a*) It is curious and not altogether useless to see how the doctrine of maintenance has from time to time been received in *Westminster Hall*. At one time not only he who laid out money to assist another in his cause, but he that by his friendship or interest saved him an expence which he would otherwise be put to, was held guilty of maintenance. Nay, if he officiously gave evidence, it was maintenance; so that he must have had a subpœna, or suppress the truth. That such doctrine, repugnant to every honest feeling of the human heart, should be soon laid aside, must be expected. *Per Buller* J. in *Master* v. *Miller*, 4 *T. R.* 340.

32 H. 8. c. 9. *or complaint, in any court having power to hold plea of lands; nor shall unlawfully retain any person for maintenance of any plea to the disturbance or hindrance of justice; on pain of* 10*l.*, *half to the king, and half to him that shall sue within one year.*

Unlawfully maintain.] It seemeth that in an information on this statute, it is not sufficient to say that the defendant maintained the party, without adding that he did it *unlawfully*. 1 *Haw.* c. 83. § 45.

Having power to hold plea of lands.] It is said to have been adjudged, that maintenance of a suit in a spiritual court is neither within this nor any other statute concerning maintenance. *Id.* c. 83. § 46.

To hold plea.] It hath been holden that in an information on this statute, it is necessary to shew that a plea was depending; and therefore that it is not sufficient to say that a bill was exhibited. *Id.* c. 83. § 47.

Counsel. A counsellor, having received his fee, may lawfully set forth his client's cause to the best advantage; but can no more justify giving him money to maintain his suit, or threatening a juror, than any other person. Attorney. *An attorney* also, when specially retained, may lawfully prosecute or defend an action, and lay out his own money in the suit; but an attorney who maintains another is not justified by a general retainer to prosecute for him in all causes. Nor can an attorney lawfully carry on a cause for another at his own expence, with a promise never to expect repayment; and it is said to be questionable whether solicitors, who are no attorneys, can, in any case, lawfully lay out their own money in another's case. 1 *Russ.* 270. 271.

§ II. Of Champerty in particular.

What it is. Champerty (from *campi parte*) is the *unlawful maintenance of a suit in consideration of some bargain to have part of the lands or thing in dispute, or part of the gains.* 1 *Haw.* c. 84. § 1. 33 *Ed.* 1. *st.* 2. 1 *Russ.* 271.

Every champerty is maintenance, but every maintenance is not champerty; for champarty is but a *species* of maintenance which is the *genus*. 2 *Inst.* 208.

How punishable by the common law. Champerty was an offence at the common law, and as such is punishable in like manner, as hath been expressed in treating of maintenance in general. 2 *Inst.* 208.

3 Ed. 1. c. 25. How punishable by statute. By stat. 3 Ed. 1. c. 25. *No officer of the king, by himself, nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof, by covenant made between them; and he that doth shall be punished at the king's pleasure.*

By covenant made.] That is, by agreement either by word or writing; for albeit in the common sense, a covenant is taken for an agreement by writing, yet in a larger sense it is taken (as it is here) for an agreement by writing or by word. 2 *Inst.* 209.

28 Ed. 1. c. 11. By stat. 28 Ed. 1. c. 11. *No person whatsoever, for to have part of the thing in plea, shall take upon him the business that is in suit, nor shall any upon such covenant give up his right to another; on pain that the taker shall forfeit to the king the value of the part he has purchased for such maintenance. But no person shall be prohibited hereby to have counsel of pleaders, or of men*

learned in the law, for their fee; or of his parents and next friends.

By stat. 33 Ed. 1. st. 3. *Any person who shall take for maintenance or the like bargain, any suit or plea against another, he and also they who consent thereto shall be imprisoned three years, and make fine at the king's pleasure. Vide Tomlins's Statutes,* Vol. I. p. 225. 33 Ed. 1. st. 3.

And by stat. 1 R. 2. c. 9. *A feoffment of lands, or gift of goods, for maintenance, shall be void, and the person disseised shall recover the lands against the first disseisors with double damages, without having any regard to such alienations.* 1 R. 2. c. 9.

Shall be void.] But it is said that it shall only be void with regard to him that hath right, and not between the feoffor and feoffee. 1 *Inst.* 369.

And by stat. 31 El. c. 5. § 4. *The offence of champerty may be laid in any county, at the pleasure of the informer.* 31 El. c. 5.

§ III. Of Embracery in particular.

What it is.

It seems clear, *that any attempt whatsoever to corrupt or influence or instruct a jury, or any way to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats, or persuasions, is a proper act of embracery,* whether the juror on whom such attempt is made give any verdict or not, or whether the verdict given be true or false. 1 *Haw. c.* 85. § 1.

And the law so far abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with; and therefore it will not suffer a mere stranger so much as to labour a juror to appear and act according to his conscience. *Id. c.* 85. § 2.

But any person who may justify any other act of maintenance may safely labour a juror to appear and give a verdict according to his conscience: but no one whatsoever can justify the labouring a juror not to appear. *Id. c.* 85. § 6.

How punishable by the common law.

There is no doubt but that offences of this kind do subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law. *Id. c.* 85. § 7.

How punishable by statute.

By stat. 32 H. 8. c. 9. § 3. 6. *No person shall embrace any jurors on pain of* 10*l., half to the king, and half to him that shall sue within a year.*

And by stat. 38 Ed. 3. st. 1. c. 12. *If any juror shall take any thing to give his verdict, both he, and the embracer, shall forfeit ten times as much, half to the king, and half to him that shall sue.* 38 Ed. 3. st. 1 c. 12.

Upon which statute is founded the writ of *Decies tantum.*

Indictment for Maintenance.

THE jurors for our lord the king upon their oath present, that A. O., *late of* ——— *in the county aforesaid, yeoman, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *with force and arms at* ——— *aforesaid, in the county aforesaid, did unjustly and unlawfully maintain and uphold a certain suit which was then depending in the court of our said lord the king before the king himself, between* A. P. *plaintiff, and* A. D. *defendant, in a plea of debt on the behalf of the said* A. P. *against the said* A. D., *contrary*

to the form of the statute in such case made and provided, and to the manifest hindrance and disturbance of justice, and in contempt of our said lord the king, and to the great damage of the said A. D., *and against the peace of our said lord the king, his crown and dignity.*

Malicious Trespasses. See stat. 1 G. 4. c. 56. Vol. V. tit. **Trespass.**

Malt. See **Excise.**

Mandamus.

MANDAMUS is a command issuing in the king's name out of the court of K. B., directed to any person, corporation, or inferior court of judicature, requiring them to do some particular thing herein specified, which appertains to their office and duty. It is a high prerogative writ, of a most extensively remedial nature; and may be issued in some cases where the injured party hath also another (but more tedious) method of redress, as in the case of admission or restitution to an office: but it issues in all cases where the party hath a right to have any thing done, and hath no other specific means of compelling its performance.

A *mandamus*, therefore, lies to compel the admission or restoration of the party applying to any office or franchise of a public nature; and more particularly it issues to the judges of any inferior court commanding them to do justice according to the powers of their office, whenever the same is delayed.

This writ is grounded on a suggestion, by the oath of the party injured, of his own right, and of the denial of justice by the court or person complained of; whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition, a rule is made (except in some general cases, where the probable ground is manifest,) directing the party complained of to shew cause why a writ of *mandamus* should not issue. If he shew no sufficient cause, the writ itself is issued, at first in the alternative, either to do thus, or signify some reason to the contrary. To which a return or answer must be made at a certain day.

And if the inferior judge or other person to whom the writ is directed returns or signifies an insufficient reason, then there issues in the second place a peremptory *mandamus*, to do the thing absolutely; to which no other return will be admitted, but a certificate of perfect obedience and due execution of the writ.

If the inferior judge or other person make no return, or fail in his respect and obedience, he is punishable for his contempt by attachment.

But if he, at the first, return a sufficient cause, although it should be false in fact, the court of K. B. will not try the truth of the fact upon affidavits, but will for the present proceed no farther on the *mandamus*. But then the party injured may have

an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained; together with a peremptory *mandamus* to the defendant to do his duty. 3 *Blac. Com.* 110.

R. v. *The Margate Pier Company*, *M.* 60 *G.*3. 3 *B.* & *A.* 220. Mandamus. The writ stated, that a rate of 1*s.* 6*d.* in the pound was duly made on or about the 17th *April* last, for the relief of the poor of the parish of *St. John the Baptist*, in the *Isle of Thanet*, in the county of *Kent*, in which parish the pier and harbour of *Margate* are situated; and that such rate was duly published, and that by it the defendants were rated at the sum of 150*l.* for and in respect of the pier and toll-houses, &c. erected thereon. It further stated an application to the defendants, and a neglect and refusal to pay the rate; and concluded by commanding payment to be made to the overseers. To this writ, the defendants made a special return. When the case came on for argument,—*Marryat*, for the *defendants*, took two objections to the writ; first, that the writ did not state that the defendants had no effects on which a distress could be levied, which was the ordinary remedy, in case of the non-payment of a poor's rate; and, secondly, that no mandamus would lie for the non-payment of a poor's rate. *Gurney* and *Bolland*, contra, admitted the first objection to be a fatal one, but contended, that it was now too late to be put as an objection; and they cited *R.* v. *The Mayor of York*, 5 *T. R.* 74., in which it was so expressly laid down by Ld. *Kenyon* and *Buller* J. A party who has such an objection, is not to wait till after the return has been made, and then to come and take the objection, but he ought to apply, in the first instance, and move that the writ should be quashed. *Abbott* C. J. I am of opinion, that it is not too late now to take an objection to the writ. Suppose an action brought for a false return, if the writ be defective, the party bringing the action can never be entitled to judgment. And, besides, in a case like this where there is no writ of error, the court will surely, at any time before a peremptory mandamus issues, suffer itself to be informed, and examine whether the writ is so framed as to give them jurisdiction. It is undoubtedly more convenient that such an objection should be taken at first, and that will probably account for the observations of Ld. *Kenyon* and Mr. J. *Buller* in the case cited. But the other authorities, shewing that such an objection may at any time be taken, do not seem to have occurred to these learned judges, when those observations were made. Then, as to the objection itself, it appears to me, that the ground of such an application as the present is, that there is no other remedy, and therefore, it is clear, that the writ ought to state that fact distinctly; if not, it would deprive the defendants of the power of traversing that most material fact, for they are only to answer what is alleged in the writ. I think, therefore, that this is an objection in substance and not in form, and that we ought to quash the writ. That being so, it becomes unnecessary to pronounce a decision on the point, whether any mandamus will lie in the present case. Writ of mandamus quashed.

A writ of mandamus to a corporation commanding them to pay a poor's rate, omitted to state that the defendants had no effects upon which a distress could be levied. Held, that this was a fatal objection to the writ, and might be taken after the return, or at any time before the issuing of the peremptory mandamus. Quære whether, in such a case, a mandamus will lie.

R. v. *The Justices of Worcestershire*, *M.* 60 *G.*3. 1 *Chitt. R.* 649. On motion for a rule to shew cause why a writ of *mandamus* should not be issued, directed to the justices of *Worcestershire*, commanding them to review certain evidence submitted to them in

A *mandamus* will not lie to justices in quarter sessions to compel them to

review their decision on an appeal, upon the ground that the adjudication was not warranted by the evidence.

quarter sessions, in a matter of appeal, on the ground that the conclusion drawn by the magistrates was not warranted by the facts proved; the court said, that no *mandamus* would lie for any such purpose. The court of quarter sessions were the only judges of the effect of evidence laid before them, and if they drew a wrong conclusion from it, the court of K. B. had no power to compel them to review their decision. In certain cases a *mandamus* might lie to the sessions to admit evidence which had been rejected, but it was never heard of that the court of K. B. would interfere with their province of deciding upon the evidence.—R. R.

The court of K. B. has no jurisdiction to review the judgment of the quarter sessions, except on a case sent up for their consideration; and, therefore, where the sessions, having heard the witnesses on one side, had refused to hear those on the other side in an appeal, on the ground that their testimony had been prefaced by observations on the part of the advocate contrary to their usual practice, the court refused to grant a *mandamus* to re-hear the appeal.

R. v. *The Justices of the County of Carnarvon*, *M.* 1 *G.* 4. 4 *B.* & *A.* 86. Motion for a rule *nisi* for a *mandamus* to be directed to the justices of *Carnarvonshire*, commanding them to enter continuances and to re-hear an appeal between two parishes, touching the settlement of a pauper. It appeared from the affidavits, that the appeal came on at the sessions on the 14th of *July* last, and that the appellants having admitted a *primâ facie* settlement in parish *A.*, relied upon the proof of a case of a subsequently acquired settlement elsewhere. Having finished their case, the attorney for the respondents proceeded to make observations upon the case proved by the appellants, and then offered to call witnesses to contradict it; but the sessions refused to allow those witnesses to be called, on the ground that he had rested his case on his argument as to the insufficiency of the case proved on the other side, and thereupon they quashed the order of removal. The affidavits further stated, that the course pursued by the attorney for the respondents, was the usual and ordinary practice of the sessions. In support of the motion it was contended, that the refusal on the part of the sessions to hear the witnesses was, in fact, a refusal to hear the appeal altogether, in which case it was every day's practice for the court of K. B. to direct the sessions by *mandamus* to hear and decide the question.—*Bayley* J. There is no instance, I believe, which can be found where the court of K. B. have interfered by *mandamus*, to direct the justices to re-hear an appeal which they have once already heard. In this case they entered into the consideration of this appeal, and, after having heard it, they have decided that the respondents ought not to be allowed to call witnesses in reply. It is possible that in that decision they may have been wrong; but it seems to me that we are not at liberty to enter into that question, as no case has been sent up for our consideration. If we were to do so, we should constitute this court a court of appeal from the quarter sessions, and we should have applications continually made to us to overturn their determinations, on the ground of the improper reception or rejection of evidence, and be called upon to review their judgment, although no case has been sent to us for that purpose. It is the duty of sessions to hear and decide, and, if they entertain any doubts, to submit them to this court, but where they do not desire our interference, we have no jurisdiction. *Holroyd* J. If it had appeared in this case, that the sessions had heard one side, and had altogether refused to hear the other, I should have thought it the same as if the case had not been heard at all, and I should then have been of opinion that this *mandamus* ought to issue; but, in this case, it appears to me that this was merely a question as to the practice of the sessions, who have determined that the evidence

tendered ought not to have been introduced with observations on the part of the advocate. I think, therefore, that this court has no jurisdiction to interfere in such a case. — R. R.

R. v. *The Justices of Middlesex, H.* 1 *&* 2 *G.* 4. 4 *B. & A.* 298. In last *M. T.* a rule *nisi* was obtained for a writ of *mandamus*, to *R. B.* and *J. M.* esquires, two of the justices of the peace for the county of *Middlesex*, commanding them to make an order on the churchwardens and overseers of the poor of the parish of *Christ Church*, for the relief of a bastard child, residing in the parish of *St. Stephen's, Coleman Street*, in the city of *London*. It appeared by the affidavits, that *Alice Ramsey*, a single woman, being resident in the parish of *Christ Church*, became pregnant with a bastard child, and that, on the 4th of *August* 1820, she was, by an order under the hands and seals of two justices, directed to be removed to the parish of *Bilderston*, in the county of *Suffolk*, as the place of her last legal settlement. On the same day, however, in consequence of her advanced state of pregnancy, the execution of the order was suspended, and she was delivered of the bastard child in question, in the parish of *Christ Church*, on the 5th of *August*. The order was never served on the parish of *Bilderston*, nor was the pauper ever removed thither; but on the 14th of *September*, she was, at the instance of the parish officers of *Christ Church*, who bought the ring and paid the marriage fees, married to *Thomas Ramsey*, the putative father of the child. No order of bastardy was ever obtained against *Thomas Ramsey*, who was a settled inhabitant of the parish of *St. Stephen's, Coleman Street*, and with his wife and the child, chargeable to that parish. After argument, the court took time to deliberate, and afterwards *Abbott* C. J. delivered their opinion. — We have considered this question, and we are all of opinion, that this court ought not to grant a *mandamus* in the present case. It is the ordinary practice of the court to grant this writ, to compel magistrates to hear and determine a case in which they have a jurisdiction to hear, but have refused altogether to exercise it: but there is not an instance which can be cited, where the court have granted a *mandamus* to justices to compel them to come to any particular decision, which would be the case if we were, upon the present occasion, to order them to make an order of maintenance upon the parish of *Christ Church*. We had at one time thought that it might be desirable to give our opinion as to the merits of this case, for the guidance of the magistrates, but upon re-considering the matter, we think that we ought not to give an extra-judicial opinion upon the case. Upon the ground, therefore, that we think the court have no power to grant a *mandamus* to the magistrates, to compel them to make such an order of maintenance, we are all of opinion that this rule ought to be discharged. — R. D.

The court of K. B. have no jurisdiction to grant a *mandamus* to magistrates to make an order for the maintenance of a bastard child on a particular parish.

R. v. *Dayrell and others, Justices of the peace for the county of Buckinghamshire*, † *E.* 4 *G.* 4. 1 *B. & C.* 485. A rule had been obtained, calling upon the defendants to shew cause why a writ of *mandamus* should not issue, commanding them to grant a warrant of distress, for enforcing payment from one *John T. A. Reid*, clerk, rector of *Lickhampstead*, in the said county, of the sum of 18*l.* 8*s.*, to the surveyor of the highways of the parish of *Lickhampstead*, being the amount of composition in lieu of statute duty, due from the said *J. T. A. Reid*, as occupier of the tithes of the said parish.

The court of K. B. will not grant a mandamus commanding justices of the peace to do that which *may* render them liable to an action.

† *Sic.*

Quære. Whether a parson, who lets his tithes from year to year to the occupiers of the lands respectively whereon they are produced, is liable to be rated to the repair of the highways?

It appeared by the affidavits, that the sum was duly fixed and ascertained, if the rector was in the occupation of the tithes. As to that, it was sworn by *Reid*, and not controverted, that he did not hold, occupy, or take in kind, nor had ever held, occupied, or taken in kind, any of the tithes, but had always let the same by parol, to the farmers or occupiers of the respective lands where such tithes arose; that the rents or sums of money payable to him by the farmers in respect of the tithes, were reserved and received by equal half yearly payments, the first of which was due on *Lady-day* in every year; that the tithes were not bargained and sold when at maturity, but were let prospectively, and without reference to any specific mode of cultivation; that the rector had not any team, draught, or plough, and never used the highways of the parish, as occupier of the tithes. The composition money was duly demanded, and *Reid* refused to pay it; and application being made to the defendants for a warrant of distress, they refused it, and assigned as a reason for their refusal, that they thought *Reid* was not liable to the performance of statute duty, or payment of composition; for, in consequence of his having let or compounded with the farmers for his tithes, the whole statute-duty devolved upon the farmers, as occupiers of the tithes.

After argument, *Per Abbott* C. J. It is manifest, that if we granted a mandamus, commanding the justices to issue a warrant of distress, the rector would bring an action to try the validity of that which we had ordered to be done. I have always felt great reluctance to order any thing to be done by a magistrate which may subject him to an action, of which the issue is doubtful. If the fear of an action appeared to be a mere pretence, and to have no reasonable foundation, we should not listen to it; but here there is so much doubt, that I am of opinion we ought not to grant a mandamus. The 43 *Eliz. c.* 2. goes much farther than the highway acts; and makes all local visible property liable to be rated, and parsons and vicars are rateable under it *eo nomine*. I say no more than that doubts exist, for I would not prejudge a question which may hereafter be discussed. Whenever such a question shall be brought before us, it will be our duty to decide it. At present I give no judicial opinion upon the point, but think that this rule must be discharged, because I am by no means satisfied that the magistrates would not be rendered liable to an action, by issuing a warrant to distrain for the rate in question. *Bayley* J. I am of opinion that this case admits of the doubt which has been raised by the magistrates. It does not follow that the parson is liable under the highway act, because he is so under the 43 *Eliz. c.* 2. Under the latter he is not liable as occupier; tithes, generally, are not mentioned in that act, although tithes impropriate are. But a parson is rateable to the poor as such, *Rex* v. *Turner*, 1 *Str.* 77. In the case of *Rex* v. *Lambeth*, 1 *Str.* 525. there was not a letting of the tithes, but a bargain *pro hâc vice;* there may be a great difference between that and a letting from year to year. On account of the great doubts which exist upon this subject, I think that we ought not to grant a mandamus.—*R. D.*

Manslaughter. See Homicide, Vol. II.



Manufacturers.

See Vol. V. tit. Servants.

[23 G. 2. c. 13. — 14 G. 3. c. 71. — 21 G. 3. c. 37. — 22 G. 3. c. 60. — 5 G. 4. c. 97.]

Seducing Artificers to leave the Kingdom.

BY stat 23 *G.* 2. *c.* 13. § 3. If any person shall put on board or cause to be put on board any vessel not bound directly to some of the *British* dominions, any tools or utensils, or part thereof, used in or proper for the preparing, working up, or finishing the *woollen or silk manufactures*, or any parts or parcels of such tools, he shall forfeit the same, and 200*l.* Tools and utensils carried out of the kingdom.

§ 4. And any officer of the customs may seize and secure in some of the king's warehouses all such tools and utensils as shall be found on board any such vessel; and the same, after condemnation in due course of law, shall be publicly sold.

§ 5. If the master or captain shall knowingly permit any the said tools or utensils to be put on board his vessel or boat, he shall forfeit 100*l.*, and if it is a king's ship, &c. he shall also forfeit his office, and be incapable of any office or employment under the crown.

§ 6. And if any officer of the customs shall take or knowingly and willingly suffer to be taken any entry outward, or sign any sufferance for shipping or exporting any the said tools, or knowingly permit the same to be done; he shall forfeit 100*l.* and his office, and be incapable of any office or employment under the crown.

§ 7. All which said forfeitures on this act shall be half to the king, and half to him that shall prosecute.

Where a defendant had been convicted upon stat. 5 *G.* 1. *c.* 27. (now repealed by stat. 5 *G.* 4. *c.* 97. § 1. and stat. 23 *G.* 2. *c.* 13. also repealed in part by 5 *G.* 4. *c.* 97. § 1. see post. p. 356) the sentence of the court was that he should be fined 500*l.*, and be imprisoned twelve months; and Lord *Mansfield* C. J. said, that the latter act seemed to be a repeal of the former, and that it was made to supply the deficiencies of the former. And Mr. J. *Aston* observed, that by the latter act there is no discretion left in the court, the punishment directed in it being peremptory. *Rex* v. *Cator*, 4 *Burr.* 2026. 5 G. 4. c. 97.

For other cases decided on stats. 5 *G.* 1. *c.* 27. and 23 *G.* 2. *c.* 13. see *Rex* v. *Metcalfe*, 4 *Burr.* 2026. *Rex* v. *Myddleton*, 6 *T.R.* 739.

And by stat. 14 *G.* 3. *c.* 71. § 1. If any person shall put on board any vessel or boat not bound directly to some port or place in *G. B.* or *Ireland* any tools or utensils, or part thereof, used and proper for preparing, working up, or finishing the *cotton or linen manufactures;* he shall forfeit the same, and also 200*l.* 14 G. 3. c. 71

14 G.3. c.71.

§ 2. Any officer of the customs may seize and secure in some of the king's warehouses all such tools and utensils or parts thereof as he shall find in any such vessel; and the same, after condemnation, shall be publicly sold; and half the produce thereof shall be to the king, and half to the officer who shall seize the same.

§ 3. If the captain or master shall knowingly permit any such tools or utensils to be put on board his ship or boat, he shall forfeit 200*l.*, and if it be a king's ship he shall also forfeit his office, and be incapable of any office or employment under the crown.

§ 4. If any officer of the customs shall take or suffer to be taken any entry outward, or sign any sufferance for shipping or exporting any the said tools or utensils, or knowingly permit the same; he shall forfeit 200*l.* and his office, and be incapable of any office or employment under the king.

Any person collecting such tools in order to export the same.

§ 5. And if any person shall collect, obtain, or have in his possession any such tools or implements as aforesaid, for the *cotton* or *linen* manufactures, or any tools or implements used in the *woollen* or *silk* manufactures, (except stock cards not exceeding 4*s.* a pair, and spinners' cards not exceeding 1*s.* 6*d.* a pair, intended to be exported to *North America*, (See stat. 15 *G.* 3. *c.* 5.,) and complaint on oath of one witness shall be made before one justice, that there is reason to believe such person hath collected or got into his possession such tools or implements, or part or parcels thereof, with intent to export the same to some other part or place than *G. B.* or *Ireland*; such justice shall issue his warrant to seize all such tools or implements, and parts or parcels thereof, and also to bring the person complained of before him or some other justice; and if he shall not give a satisfactory account to such justice of the use or purpose to which such tools or utensils, or parts or parcels thereof, are intended to be appropriated, the said justice shall cause the same to be detained, and bind the person so charged with reasonable sureties, to appear at the next assizes or quarter sessions; and if he shall not give such security, the justice shall commit him to gaol till the next assizes or sessions, at the election of such justice, and until he shall be delivered by due course of law. And if he shall be there convicted, he shall forfeit all such tools, &c. and also 200*l.*

Justices may grant warrants, &c.

And in case such person be convicted, he shall lose all such utensils and forfeit 200l.

§ 6. All forfeitures by this act inflicted on offenders shall be applied half to the king, and half to him who shall sue.

If any person, in G.B. or Ireland shall pack or put on board any vessel any machine, tool, or utensil, used in the woollen, cotton, linen, or silk manufactures, or any model of such machine, &c. Any justice may grant a warrant for seizing such

And by stat. 21 *G.* 3. *c.* 37. § 1. If any person shall put on board or pack, or cause the same to be done, in order to be put on board any vessel not bound directly to any port in *G. B.* or *Ireland*, or shall lade or procure to be laden on board any boat or vessel, or shall bring or cause to be brought to any quay, wharf, or other place in order to be so laden or put on board any such vessel, any machine, engine, tool, press, paper, utensil, or implement, or any part, model, or plan thereof, proper for the *woollen*, *cotton*, *linen*, or *silk* manufactures, one justice, on complaint upon oath by one witness, may issue his warrant to seize the same, together with the package and other goods packed therewith (if any such there be), and to bring the person complained of before him or some other justice; and if he shall not give to such justice a satisfactory account of the purpose to which the same are intended to be appropriated, the justice shall cause the same

to be detained, and bind the party with reasonable sureties to appear at the next assizes or quarter sessions, and on neglect or refusal so to do, shall commit him to the gaol or house of correction until the next assizes or sessions, and until delivered by due course of law. And on conviction at such assizes or sessions, upon indictment or information, he shall forfeit all the said goods, and also 200*l.*, and be imprisoned in the common gaol or house of correction for twelve months, and until the forfeiture shall be paid. 21 G.3. c.37. machines, &c. and bringing such person before him, &c.

§ 2. The officers of the customs may seize any such goods; and after condemnation in due course of law, the same shall be sold by order of the commissioners to the best bidder, and the produce thereof, after charges deducted, shall go half to the king and half to the officer who shall seize and prosecute.

§ 3. If the captain or master of any vessel shall knowingly permit any such machine, &c. to be put on board his ship, &c. he shall forfeit 200*l.*; and if it be a king's ship, he shall also forfeit his employment, and be incapable to hold any office or employment under the crown.

§ 4. If any officer of the customs shall take any entry outward, or sign any sufferance for the shipping or exporting the same, or knowingly permit the same to be done; he shall forfeit 200*l.* and his office, and be incapable of any office or employment under the crown.

§ 6. And if any person hath in his custody, power, or possession, or shall collect, apply for, or procure to be made, any such machine or implement, model or part, as aforesaid; he shall, on the like conviction, forfeit the same, and also 200*l.*, and be imprisoned for twelve months, and until the forfeiture shall be paid. Prosecution upon this clause to be within twelve months after the offence committed.

§ 7. The said forfeitures, not herein otherwise directed, to go to the informer, after the expences of prosecution paid.

§ 9. Provided, that nothing herein shall extend to the preventing woollen cards or stock cards, not exceeding in value 4*s.* a pair, and spinners' cards, not exceeding 1*s.* 6*d.* a pair, from being exported to any of H. M.'s colonies in *America*.

By stat. 22 *G.* 3. *c.* 60. § 3. If any person shall export or attempt to export any blocks, plates, engines, tools, or utensils, commonly used in the calico, cotton, muslin, or linen printing manufactures, he shall forfeit the same, and also 500*l.*, to be recovered in the courts at *Westminster*. 22 G.3. c.60.

§ 4. Officers of the customs may seize (as in the other acts).

§ 5. And any officer of the ship conniving thereat shall forfeit 100*l.*; and if it be a king's ship, he shall also be incapable of any office or commission under the king.

Penalty on officers of the customs offending (as in the other acts) 100*l.*

By stat. 5 *G.* 4. *c.* 97. intituled, "*An act to repeal the laws relative to artificers going into foreign parts*", After reciting, whereas it is expedient that the several laws relative to artificers going into foreign parts should be repealed: it is therefore enacted, that from and after the passing of this act (21st *June*, 1824,) stat. 5 *G.* 1. *c.* 27., intituled, *An act to prevent the inconveniences arising from seducing artificers in the manufactures of* G. B. *into foreign parts*; 5 G.4. c.97 The following acts and parts of acts relative to artificers going out of the kingdom repealed, viz.

6 G. 4. c. 97.

5 G. 1. c. 27. 23 G. 2. c. 13. in part;

also so much of stat. 23 *G.* 2. *c.* 13., intituled, *An act for the effectual punishing of persons convicted of seducing artificers in the manufactures of* G. B. *or* Ireland *out of the dominions of the crown of* G. B.; *and to prevent the exportation of utensils made use of in the woollen and silk manufactures from* G. B. *or* Ireland *into foreign parts; and for the more easy and speedy determination of appeals allowed in certain cases by an act made in the last session of parliament, relating to persons employed in the several manufactures therein mentioned;* as relates to contracting with, enticing, persuading, or endeavouring to persuade, solicit, or seduce manufacturers, workmen, and artificers, as therein mentioned; also so much

22 G. 3. c. 60. in part;

of stat. 22 *G.* 3. *c.* 60., intituled, *An act to prevent the seducing of artificers or workmen employed in printing calicoes, cottons, muslins, and linens, or in making or preparing blocks, plates, or other implements used in that manufactory, to go to parts beyond the seas; and to prohibit the exporting to foreign parts of any such blocks, plates, or other implements,* as relates to contracting with, enticing, persuading, or endeavouring to seduce or encourage artificers and

25 G. 3. (I.) in part;

workmen as therein mentioned; also so much of 25 *G.* 3. (*Ireland*), intituled, *An act to prevent the practice of seducing artificers and manufacturers of this Kingdom, and of exporting the several tools and utensils made use of in preparing and working up the manufactures thereof, into parts beyond the seas,* as relates to contracting with, enticing, persuading, or endeavouring to persuade, soliciting, or seducing manufacturers, workmen, or artificers, as therein men-

and 25 G. 3. c. 67. in part;

tioned; and also so much of stat. 25 *G.* 3. *c.* 67., intituled, *An act to prohibit the exportation to foreign parts of tools and utensils made use of in the iron and steel manufactures of this Kingdom; and to prevent the seducing of artificers or workmen employed in those manufactures to go into parts beyond the seas,* as relates to contracting with, enticing, persuading, or endeavouring to seduce or encourage artificers or workmen as therein mentioned; also so

also so much of 39 G. 3. c. 56. as relates to the seducing of colliers, &c.. and other acts relative to the same subjects.

much of stat. 39 *G.* 3. *c.* 56., intituled, *An act to explain and amend the laws relative to colliers in that part of* G. B. *called* Scotland; as punishes the seducing or attempting to seduce colliers or others, as therein mentioned; together with every other law, statute, or enactment relative to the same subjects, or any of them, and whether in force throughout or in any part of the U. K. of *G. B.* and *Ireland*, shall be and the same are hereby repealed, save and except in as far as the same may have repealed any prior act or enactment.

Marriage.

[4 G. 4. c. 76.—5 G. 4. c. 32.]

4 G. 4. c. 76.

BY stat. 4 *G.* 4. *c.* 76. intituled "*An Act for amending the laws respecting the solemnization of marriage in* England," after reciting that it is expedient to amend the laws respecting the solemnization of marriages in *England*; it is enacted, that from and after the 1st of *Nov.* 1823, so much of stat. 26 *G.* 2. *c.* 33., intituled, *An act for the better preventing of clandestine marriages,* as was in force immediately before the passing of this

act; and also stat. 4 *G.* 4. *c.* 17., intituled, *An act to repeal certain provisions of an act passed in the third year of his present majesty, intituled, 'An act to amend certain provisions of the twenty-sixth of* George *the second, for the better preventing of clandestine marriages;'* shall be and the same are hereby repealed; save and except as to any acts, matters, or things done under the provisions of the said recited acts, or either of them, before the said 1st of *Nov.*, as to which the said recited acts shall respectively be of the same force and effect as if this act had not been made; save also and except so far as the said recited acts, or either of them, repeal any former act, or any clause, matter, or thing therein contained.

4 G. 4. c. 76.

26 G. 2. c. 33 & 4 G. 4. c. 17 repealed.

§ 3. Enacts, that the bishop of the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel, having a chapelry thereunto annexed, may be situated, or of any chapel situated in an extra-parochial place, signified to him under their hands and seals respectively, may authorize, by writing under his hand and seal, the publication of banns and the solemnization of marriages in such chapel for persons residing within such chapelry or extra-parochial place respectively; and such consent, together with such written authority, shall be registered in the registry of the diocese.

Bishop, with consent of patron and incumbent, may authorize publication of banns in any public chapel.

§ 4. Provided, that in every chapel in respect of which such authority shall be given as aforesaid, there shall be placed in some conspicuous part of the interior of such chapel a notice in the words following: "Banns may be published and marriages solemnized in this chapel."

Notice to be placed in such chapel.

§ 12. Provided, that all parishes where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually solemnized every *Sunday*, and all extra-parochial places whatever, having no public chapel wherein banns may be lawfully published, shall be deemed and taken to belong to any parish or chapelry next adjoining, for the purposes of this act only; and where banns shall be published in any church or chapel of any parish or chapelry adjoining to any such parish or chapelry where there shall be no church or chapel, or none wherein divine service shall be solemnized as aforesaid, or to any extra-parochial place as aforesaid, the parson, vicar, minister, or curate publishing such banns shall, in writing under his hand, certify the publication thereof in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry.

Parishes, where no church or chapel, and extra-parochial places, deemed to belong to any adjoining parish, &c.

§ 13. Provided, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished, in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid; and where no such place shall be so licensed, then, during such period as aforesaid, the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed; and all marriages heretofore solemnized in other places within the said parishes or chapelries than the said churches or chapels, on account of their being under repair, or taken down

Where churches are demolished or under repair, banns to be proclaimed in a church or chapel of an adjoining parish, &c.

4 G.4. c.76. in order to be rebuilt, shall not be liable to have their validity questioned on that account, nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever.

5 G.4. c.32. By stat. 5 *G.* 4. *c.* 32. § 1. After reciting, that whereas by stat. 4 *G.* 4. *c.* 76. § 13. it is provided, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid; but it is not provided that marriages may be solemnized in such place so licensed: and whereas it is farther provided, that where no such place shall be so licensed, then during such period as aforesaid the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed; but it is not provided that marriages may be solemnized *by licence* in such adjoining church or chapel as aforesaid: And whereas it is provided that all marriages *theretofore*, but it is not provided that marriages *thereafter* solemnized in other places within the said parishes or chapelries than the said churches or chapels, on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on that account: and whereas it is provided, that the ministers who have so solemnized the same shall not be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever; but it is not provided that the ministers who shall thereafter solemnize such marriages shall not be liable to such censure or other proceeding or penalty: and whereas it is expedient that marriages heretofore and hereafter solemnized in such place so licensed as aforesaid, during the repair or rebuilding of any church or chapel, or if no such place shall be so licensed, then in a church or chapel of some adjoining parish or chapelry, whether by banns lawfully proclaimed, or by licence lawfully granted, should not have their validity questioned on account of their being so solemnized: and whereas it is expedient that the ministers who shall have so solemnized the same should not be liable to any ecclesiastical censure, or to any other proceeding whatsoever: it is enacted, that from the passing of this act (*viz.* 17th of *May*, 1824,) all marriages which have been heretofore solemnized, or which shall be hereafter solemnized in any place within the limits of such parish or chapelry so licensed as aforesaid, for the performance of divine service during the repair or rebuilding of the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, or if no such place shall be so licensed, then in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, whether by banns lawfully published in such church or chapel, or by licence lawfully granted, shall not have their validity questioned on account of their having been so solemnized; nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding whatsoever.

Validity of marriages solemnized in certain places where churches or chapels are under repair, &c. not to be questioned.

5 G.4. c.32.

Licences for marriages in churches, &c. extend to any place within the parish, licensed for performance of divine service while church is repairing, &c.

By § 2. All licences granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences for the solemnization of marriages in the church of any parish or chapel of any chapelry wherein marriages have been usually solemnized, shall be deemed and taken to be licences for the solemnization of marriages in any place within the limits of such parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of any such church or chapel, or if no such place shall be so licensed, then in the church or chapel of any adjoining parish or chapelry wherein marriages have been usually solemnized.

Banns and marriages solemnized in such licensed places, shall be considered as done in the parish church.

By § 3. All banns of marriage proclaimed, and all marriages solemnized according to the provisions of this act, in any place licensed as aforesaid, within the limits of any parish or chapelry, during the repair or rebuilding of the church or chapel of such parish or chapelry, shall be considered as proclaimed and solemnized in the church or chapel of such parish or chapelry, and shall be so registered accordingly.

Persons solemnizing marriage in any other place than a church or chapel, or without banns or licence, or under pretence of being in holy orders, shall be transported. Prosecution to be within 3 years.

Stat. 4 *G.* 4. *c.*76. § 21. Enacts, that if any person shall, from and after the 1st of *Nov.* 1823, solemnize matrimony in any other place than a church or such public chapel wherein banns may be lawfully published, or at any other time than between the hours of eight and twelve in the forenoon, unless by special licence from the archbishop of *Canterbury*, or shall solemnize matrimony without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same; or if any person, falsely pretending to be in holy orders, shall solemnize matrimony according to the rites of the church of *England*; every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported for the space of 14 years, according to the laws in force for transportation of felons: Provided, that all prosecutions for such felony shall be commenced within the space of 3 years after the offence committed.

Marriage to be void where persons wilfully marry in any other place than a church, &c. or without banns or licence.

§ 22. Provided, that if any persons shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns may be lawfully published, unless by special licence as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns, or licence from a person or persons having authority to grant the same, first had and obtained, or shall knowingly and wilfully consent to or acquiesce in the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever.

Proof of actual residence of parties not necessary to validity of marriage, whether after banns or by licence.

§ 26. After the solemnization of any marriage under a publication of banns, it shall not be necessary in support of such marriage to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or where the marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for the space of fifteen days as aforesaid, was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases

4 G.4. c.76. be received to prove the contrary in any suit touching the validity of such marriage.

And for marriages of Quakers and Jews. By § 31. nothing in this act contained shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively.

Act only to extend to England. By § 33. this act shall extend only to that part of the U. K. called *England*.

Registers of marriage. Registers of marriage; see *post*, tit. Parish Registers; and Poor, Vol. IV. § VII. 4.

Master. See **Servant**, Vol. V., **Apprentice**, Vol. I.

Measures. See **Weights**, Vol. V.

Medicines:

[25 G.3. c.79. — 42 G.3. c.56. — 43 G.3. c.73. — 44 G.3. c.98. — 52 G.3. c.150.]

42 G.3. c.56. BY stat. 42 *G.* 3. *c.* 56. the 25 *G.* 3. *c.* 79. was repealed, and new duties on medicines, named in a schedule, were charged, and provision made for the collection thereof; and by stat. 43 *G.* 3. *c.* 73. the schedule of 42 *G.* 3. and so much of said 42 *G.* 3. as related thereto was repealed, and a new schedule substituted; therefore these acts are to be taken together.

44 G.3. c.98. sch. (B.) By stat. 44 *G.* 3. *c.* 98. sch. (B.) A certain other list of medicines requiring stamps was set forth, and certain regulations established.

52 G.3. c. 150. But by stat. 52 *G.* 3. *c.* 150. § 1. The said schedule to stat. 44 *G.* 3. *c.* 98. is repealed and another substituted in lieu thereof.

Penalty on persons vending medicines without a paper cover provided by the commissioners of stamps. And by § 2. If any person, whether licensed or not, shall utter, vend, or expose to sale, or offer or keep ready for sale, or buy, or receive, or keep for the purpose of selling by retail, either on his own or on the account of any other person, any packet, &c. or other inclosure containing any of the drugs, &c. set forth in the schedule annexed to this act, without a paper cover or label supplied by the commissioners of stamps, pursuant to the 44 *G.* 3. *c.* 98., or the 42 *G.* 3. *c.* 56., and duly stamped, for denoting the duty charged thereon, being properly affixed thereto, so as that such packet, &c. cannot be opened and the contents taken therefrom without tearing such stamped cover, &c. so as to prevent its being used again, the person so offending shall for every such offence forfeit 10*l.*, to be recovered and applied as in said 42d and 44th of the king.

Licence. By stat. 42 *G.* 3. *c.* 56. Every owner, proprietor, maker, and compounder of, and every person in *G. B.* uttering, vending, or exposing to sale, or keeping ready for sale, any drugs, herbs, pills, waters, essences, tinctures, powders, or other preparations or com-

positions whatsoever, used or applied to, or to be used or applied externally or internally, as medicines for any complaint incident to the human body, or any packets, boxes, bottles, pots, phials, or other inclosures, with any such contents as aforesaid, shall annually take out a stamp licence, which shall continue in force till *Sept.* 1st in each year, to commence from the day of the date of every such licence, and to be renewed yearly; and for every such licence shall be paid, if for *London* or within the limits of the two-penny post, 40*s*., if in any city, borough, or town corporate, or in *Manchester*, *Birmingham*, or *Sheffield*, 10*s*., if elsewhere, 5*s*. And no person shall receive any profit as the owner of, or make or compound, or utter, vend, or expose to sale, or keep ready for sale, any drugs, herbs, &c. or any packets, &c. or other inclosure as aforesaid, with any such contents as aforesaid, liable to the duties hereby granted, without a licence, on pain of 20*l*. for every such offence. 42 G. 3. c. 56. Duty thereon. Selling medicines liable to duties without licence, penalty of 20l.

And upon every packet, box, bottle, pot, phial, or other inclosure, containing any such drugs or medicines as aforesaid, to be used as aforesaid, which shall be uttered or vended, shall be charged a stamp duty according to the rates following; (that is to say,) [*Here follow the rates.*] Duty on medicines.

§ 7. The said duties to be under the management of the commissioners of the stamp duties.

§ 3. The said duties to be paid by the owners, &c. of such drugs, &c. before delivered out of their possession for sale, or in any way offered or exposed to sale, or kept ready for sale, and not in bulk in any place by any such owner, &c. or any one in their behalf. Duties payable before the drugs, &c. are exposed to sale, &c.

§ 4. Provided that the same shall not extend to any drugs named or contained in either of the books of rates; (that is to say,) the book of rates subscribed by Sir *Harbottle Grimstone*, Bart., and referred to by stat. 12 *C.* 2. *c.* 4. and an additional book of rates signed by the Right Honourable *Spencer Compton*, and referred to by 11 *G.* 1. *c.* 7.— Nor to any medicinal drug which shall be vended entire, without any mixture or composition with any other drug or ingredients, by any surgeon, apothecary, chymist or druggist, who hath served a regular apprenticeship, or by any person who hath served as a surgeon in the navy or army, under any commission or appointment, or by any other person licensed as aforesaid; but all such drugs may be uttered and vended by any such persons, freed from the said duties. See also stat. 52 *G.* 3. *c.* 150. Exceptions. Drugs sold entire by regular surgeons, &c.

§ 5. Provided also, that nothing herein shall extend to charge any mixture, composition, or preparation whatsoever, uttered or vended by any such surgeon, &c. or by any person who hath served as a surgeon in the navy or army as aforesaid, the different denominations, properties, and efficacies of which mixtures, &c. are known and approved; and wherein the person compounding or vending the same had not, nor claims to have any secret, or unknown art for the mixing thereof, nor claims to have any exclusive right in the mixing or vending the same, and which mixtures, &c. are not prepared or vended by the authority of *letters patent;* nor which are by advertisement recommended by the owners, makers, or first venders thereof, as nostrums, or proprietary medicines, or as specifics for prevention or cure of any distemper or complaints. See also stat. 52 *G.* 3. *c.* 150. Mixtures, the qualities whereof are known.

42 G.3. c.56.

Venders to apply to the commissioners for covers, and deliver their name and residence in writing.

§ 10. Every person making, compounding, preparing, uttering, vending, or exposing to sale, or keeping ready for sale, any such drugs, herbs, &c. or any packets, &c. or other inclosures aforesaid, with any such contents as aforesaid subject to the duties hereby granted, shall from time to time apply to the commissioners of stamps or their officers for paper covers, wrappers, or labels, to be pasted, stuck, fastened, or affixed to such packets, &c. or other inclosures, with any such contents as aforesaid; and shall at the same time deliver to such officer a note containing his name and place of abode, and the place where the drug, herb, medicine, medicament, preparation, or composition, in respect whereof such application is made, is first sold; and such note shall be filed by such officer.

The covers to be marked with the duties, and affixed to the medicines before sale, according to the direction of the commissioners, who shall deliver their regulations to applicants for licences.

§ 11. And the commissioners, or the major part of them, shall cause to be printed or impressed on the said papers, covers, &c. some mark or particular word to denote the said duties, and the rate thereof; and shall cause to be delivered from time to time to every such licensed owner, &c. as occasion shall require, sufficient covers, &c. for the purpose aforesaid, on payment of the stamp duty thereon; and every packet, &c. and other inclosure with the contents as aforesaid, as soon as made and kept ready for sale, and before the same be uttered, vended, or exposed to sale by any person to any person, either wholesale or retail, shall have sufficiently pasted, stuck, fastened, or affixed thereto, such covers, stamped, &c. as aforesaid, as the commissioners shall direct; and the said commissioners shall from time to time direct the manner in which such covers, &c. shall be affixed, and make such regulations in that behalf as to them shall seem necessary to prevent any such covers, &c. being made use of again, after they shall have been disposed of; which regulations shall be delivered to every owner, &c. at the time of taking out his first or future licence, if any variation in such regulations shall have been made.

Allowance for prompt payment.

§ 16. Whoever shall bring to the head office of stamps any such papers, covers, &c. to be stamped as aforesaid, the duties whereof shall amount to ten pounds or upwards, shall have an allowance upon *present payment* of the said duty, after the rate of 2*l.*, and if such duty amount to 50*l.* or upwards, 5*l.* in the hundred *per annum*.

43 G. 3. c. 73. Persons receiving from proprietors articles subject to duty without labels, and not returning them or informing the commissioners, shall forfeit 20l.

By stat. 43 *G.*3. *c.*73. § 2. If any person who shall receive from any proprietor, compounder, or original or first vender, or any agent of theirs, or person employed by them, any article subject to any duty granted by the aforesaid act, for the purpose of selling the same again, without the label denoting the duty being first duly affixed thereto, and shall not within 10 days return the same to the person from whom such article was received, or within that time give information thereof to the commissioners in *Somerset Place*, and deposit such article with the nearest distributor of stamps, he shall forfeit for every such offence 20*l.*, to be recovered as any penalty imposed by the said act may be recovered under the said act and this act.

42 G. 3. c. 56. Persons vending medicines without labels affixed thereto,

By stat. 42 *G.*3. *c.*56. § 12. No person shall utter, vend, or expose to sale, or offer, or keep ready for sale, or buy or receive, or keep to sell by retail, either on his own account, or on behalf of another, any packet, &c. or other inclosure containing any

drug, herb, &c. subject to the stamp duties hereby imposed, unless the cover, &c. hereby directed to be pasted, &c. as before mentioned, and marked as before directed, previous to sale, &c. or shall have any cover, &c. pasted, &c. marked with a mark or stamp of less denomination or value than by this act directed, under forfeiture for every packet, &c. or other inclosure, containing any such drug, &c. so uttered, vended, or exposed to sale, or kept ready for sale, 10*l*., to be recovered and applied as hereinafter directed.

42 G.3. c.56. to forfeit 10l. for each packet, &c.

§ 13, 14, 15. If any person shall fraudulently cut, tear, or take off any such mark or stamp from any such packet, &c. or other inclosure, after the same hath been sold as aforesaid; or fraudulently affix to any such packet, &c. or other inclosure, any cover so marked, &c. the same having been before used; or shall buy or sell any such cover, in order to be again made use of; or shall buy or sell, or expose to sale, any such packet, &c. with such cover before used affixed thereto; he shall forfeit 20*l*. And either buyer or seller informing against the other shall be indemnified, and shall be admitted to give evidence, and receive the same benefit as any other informer.

Persons fraudulently using covers.

And by stat. 43 *G.* 3. *c.* 73. § 3. Upon the outside of all parcels, boxes, trunks, or packages in which shall be contained one dozen or more of packets, &c. or in other inclosures, containing any article in the said acts mentioned, and subject to duty under the said act or this act, sent by any proprietor, compounder, or original vender thereof, or any agent of theirs, or person employed by them, to any retail vender, by any public conveyance, or which shall be about to be exported, the word "Medicines" shall be written; and also the name of such proprietor, compounder, or original vender, and of the person or persons sending or exporting the same, if not such proprietor, &c.; and it shall be lawful for any officers of the customs or excise, or any person appointed by the commissioners of stamps, by authority in writing of any magistrate or justice (which authority any magistrate or justice is hereby required to grant, on information before him on oath that there is reason to suspect that any such parcel, &c. contains such articles subject to such duties, and not properly labelled,) to open such parcels, &c. and examine if the proper labels be duly affixed to the articles therein contained; and in case such labels are not fixed thereto, according to the provisions of the aforesaid act and this act, to seize the same, and send or deliver the same to the said commissioners at *Somerset Place*, who are hereby authorized to reward the officer or officers making any such seizure as to them shall seem fit.

43 G. 3. c. 73. On the outside of parcels containing twelve inclosures shall be written "Medicines," &c.

Officers may open suspected parcels, and seize articles not labelled.

By stat. 42 *G.* 3. *c.* 56. § 18. In case any covers, &c. shall be damaged, &c. in affixing the same upon the articles aforesaid, or otherwise, so as to be unfit for use, such persons being duly licensed pursuant to this act, may bring such covers, together with the articles to which they were affixed, to the commissioners or their head officer, and on oath (or affirmation, if Quakers) thereof made to the satisfaction of such commissioners or head officer (who may administer the same, and examine into all the circumstances,) that such covers, &c. have not been used for any other purpose, or in any other manner, nor have been fraudulently rebought or returned after being used, and that no money or other

42 G. 3. c. 56. Covers defaced in affixing them on the articles may be returned to, and replaced at the stamp office.

42 G.3. c.56. consideration had been paid for the same, except the money first paid for such covers, &c. at the stamp office or other places appointed for the distribution thereof; then the commissioners are required after destroying such defaced covers, &c. to deliver to such licensed person other covers, &c. of the same denomination instead thereof, without demanding or taking for the same any consideration.

Notice to be given of the place of making or vending medicines.

§ 17. Every person who shall make or expose to sale any medicines liable to the said duties shall, before he makes or exposes the same to sale, give notice in writing at the next stamp office of the place he uses or intends to make use of, which notice shall be sent to the commissioners for the time being, or to their officers next adjacent to the place used or intended to be made use of; and the like notice shall be given as often as any such person shall change his place; and such notice shall contain the particular places used, or intended to be made use of, on pain that every person making default or giving false notice shall forfeit 10*l*.

To what medicines this act shall extend.

§ 19. And in order to obviate any doubts to what medicines the said duties shall extend, a schedule (A.) is annexed, and the said duties shall extend to every article named therein, or by whatsoever other name the same hath been or may be called or known. And all pills, &c. wherein the person making, preparing, selling, or exposing to sale the same, hath or claims to have any secret art, or exclusive right to the making or preparing thereof by letters patent, or which are by advertisement recommended by the maker, vender, or proprietor, as nostrums or medicines for prevention or cure of distempers or complaints as aforesaid, shall be liable to the said duties.

§ 20. The powers of former stamp acts extended to this act.

Penalties how to be recovered.

§ 23. 25. All pecuniary penalties by this act imposed may be sued for in the courts at *Westminster*; or be recovered before any neighbouring justice, on complaint made within *six* months after the offence committed; who shall summon the party accused, and also the witnesses, on either side, and upon confession or oath of one witness give judgment therein, and issue his warrant to levy such pecuniary penalty by distress; and cause sale to be made, in case it be not redeemed in six days, and for want of sufficient distress, the offender shall be committed to prison for three months, unless such penalty be sooner paid.

Appeal.

And if any person find himself aggrieved by the judgment of such justice, he may, on giving security to the amount of such penalty and costs, in case such judgment be affirmed, appeal to the next sessions, whose determination shall be final, and in case judgment be affirmed, they may award costs of appeal as to them shall seem meet.

Witnesses not appearing.

§ 26. Witnesses not appearing, having been duly summoned, without reasonable cause to be allowed by such justice, shall forfeit 40*s*. to be recovered in like manner.

Conviction.

§ 27. And the justice before whom any offender shall be convicted as aforesaid shall cause the conviction to be made out in the following form, or to the same effect:

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, in the county of ———, A. O. *of ——— was convicted before me* J. P., *one of his majesty's justices*

of the peace for the said county residing near the place where the offence was committed, for that the said A. O. *on the* ——— *day of* ———, *now last past, did, contrary to the form of the statute in that case made and provided* [here state the offence]; *and I do declare and adjudge, that he the said* A. O. *hath forfeited the sum of* ——— *of lawful money of* Great Britain *for the offence aforesaid, to be distributed as the law directs. Given, &c.* 42 G.3. c.56.

§ 22. 24. All penalties if sued for *within six* calendar months of the time of being incurred, shall be distributed half to the king, and half with full costs to the person who shall inform and sue: if *after six* calendar months, the whole shall go to the king. Application of the penalties.

But by stat. 43 *G.3. c.*73. § 4. It shall not be lawful for any person whatever to commence, prosecute, enter, or file, or cause to be commenced, &c. any action, &c. in any of H. M.'s courts against any person, or to proceed before any justice, or before any magistrate in a summary way, for the recovery of any fine, &c. incurred by virtue of the act of the 42d year aforesaid, unless the same be commenced, &c. in the name of H. M.'s attorney-general, and by his authority, or by and in the name of some officer or person appointed for that purpose by the commissioners of stamps; and if any action, &c. shall be commenced, &c. otherwise than as aforesaid, the same, and all proceedings thereupon had, are hereby declared null and void; and the said courts, justices, or magistrates, wherein or before whom such action or actions, &c. shall be so commenced, &c. shall not permit any proceeding to be had thereupon. 43 G. 3. c. 73. No person shall commence any action, or proceed before any justice for any penalty unless in the name of the attorney-general, or some person appointed by the commissioners of stamps.

§ 5. Provided always, that every action, &c. brought, entered, or filed in any court, or before any justice or magistrate, for any pecuniary penalty under the said act or this act, shall be commenced within three months after forfeiture and not afterwards; and any justice or magistrate may, when he shall see cause, mitigate any such penalty, the reasonable costs and charges of the officer, person, or informer, as well in making the discovery as in prosecuting the same, being always allowed (if demanded) over and above such mitigation, and so as such mitigation be not to less than one-fourth part. Limitation of actions. Penalties may be mitigated.

Stat. 52 *G.* 3. *c.* 150. § 4. Provides, that it shall not be necessary for any victualler, confectioner, pastry-cook, fruiterer, or other shopkeeper who shall only sell any of the artificial or other waters mentioned in the schedule hereunto annexed, to be drank in his or her house or shop, and which shall be actually drank therein, to take out a licence for that purpose under stats. 42 *G.* 3. *c.* 56. and 44 *G.* 3. *c.* 98., provided such waters shall be sold by him in bottles with paper covers or labels duly stamped, properly affixed to the same as hereinbefore mentioned. 52 G. 3. c. 150. Victuallers, &c. not required to take out licence who shall sell any of the artificial or other waters mentioned in the schedule, and which shall be drank in their houses.

See also stat. 55 *G.*3. *c.* 184. § 54. title **Stamps**, Vol. V.

Military Law.

THE ancient military order was, when the king was to be served with soldiers for his war, a knight or esquire of the country that had revenues, farmers, and tenants, would covenant with the

king by indenture inrolled in the exchequer, to serve the king for such a term with so many men especially named in a list, in his war. 1 *Inst.* 71.

In consequence whereof, there are many regulations in divers statutes concerning the same; which however being now out of use, it is thought sufficient merely to mention the principal thereof; viz. 13 *Ed.* 1. *c.* 6. 18 *H.* 6. *c.* 19. 7 *H.* 7. *c.* 1. 2 & 3 *Ed.* 6. *c.* 2. 4 & 5 *P.* & *M.* *c.* 3.

For the laws and constitution of this kingdom know no such state as that of a perpetual standing soldier bred up to no other profession than that of war. But it has for many years past been judged necessary by our legislature, for the safety of the kingdom, the defence of the possessions of the crown, and the preservation of the balance of power, to maintain even in time of peace a standing body of troops, under the command of the crown, who are however *ipso facto* disbanded at the expiration of every year, unless continued by parliament; and if from experience past we may judge of future events, the army is now lastingly engrafted into the *British* constitution; with this singularly fortunate circumstance, that any branch of the legislature may annually put an end to its legal existence, by refusing to concur in its continuance. 1 *Blac. Com.* 408. 414. 421.

The military state includes the whole of the soldiery, or such persons as are peculiarly appointed among the rest of the people for the safeguard and defence of the realm. 1 *Blac. Com.* 408.

It is thought best to arrange, under this title, the respective members of the military force, and to treat of them under the subdivions respectively following;

§ I. The Regulars, including the Royal Marines.
II. The Militia.
III. Annual Training.
IV. Local Militia.
V. Yeomanry and Volunteers.

I. *SOLDIERS.*

[43 El. c. 3.—31 C. 2. c. 1.—8 G. 2. c. 30.—19 G. 2. c. 21.—28 G. 2. c. 1.—3 G. 3. c. 8.—24 G. 3. sess. 2. c. 6.—37 G. 3. c. 70.—42 G. 3. c. 69.—43 G. 3. c. 61.—46 G. 3. cc. 69. 92.—47 G. 3. c. 25.—55 G. 3. cc. 153. 184.—56 G. 3. c. 67.—57 G. 3. c. 7.—58 G. 3. cc. 73. 92.—5 G. 4. cc. 13, 14. 31.]

For soldiers inlisting into foreign service, see title Foreign Service, Vol. II.

The present regulations for the army and the royal marine forces when on shore are chiefly contained in the yearly acts against mutiny and desertion; the substance of which, so far as justices of the peace and other civil officers are concerned, is contained in the following sections:

1. *Articles of War.*
2. *Inlisting Soldiers.*
3. *Muster.*

4. *Carriages.*
5. *Billeting.*
6. *Removal in Time of Elections.*
7. *Examination as to their Settlements.*
8. *Destroying the Game.*
9. *Arrest for Debt.*
10. *Pay.*
11. *Desertion.*
12. *Setting up Trades after their Discharge.*
13. *Maintenance after their Discharge, and Payment of Pensions.*
14. *Probate of their Wills.*
15. *Marine Forces whilst on Shore.*
16. *Relief from the Penalties of the Vagrant Acts.*
17. *Of Imprisonment, and of the Demeanor of Gaolers.*

1. Articles of War.

By stat. 5 *G.*4. *c.*13., being the last mutiny act, which is to continue until the 25th *March*, 1825, § 35. & 37., The king may form articles of war for the better government of the forces, and constitute courts martial with power to try any crimes by such articles of war. But no person shall be adjudged to suffer any punishment extending to life or limb, by the said articles, except for crimes expressed to be so punishable by this act. 5 G. 4. c. 13.

2. Inlisting Soldiers.

§ 90. Every person who shall receive inlisting money from any officer employed on the recruiting service, or from any non-commissioned officer or private soldier belonging to the recruiting party under the command of such officer, or from any person employed on the recruiting service, he being an attested soldier, shall be deemed to be inlisted as a soldier in H. M.'s service, and shall while he shall remain with the recruiting party be entitled to be billetted and quartered as a soldier in H. M.'s service; but every such person so inlisted shall be entitled to all the benefits herein enacted for the relief of persons hastily inlisting themselves. Persons receiving inlisting money deemed to be inlisted.

§ 93. When any person shall be inlisted, he shall in four days, but not sooner than 24 hours, be carried or go with some officer, non-commissioned officer, or private soldier belonging to the recruiting party by which he shall be inlisted, or with the person employed on the recruiting service with whom he shall have inlisted, before some justice or chief magistrate residing or being next to or in the vicinity of the place, and acting for the division or district where such person shall have inlisted (not being an officer in the army), and before him shall be at liberty to declare his dissent to such inlisting; and on such declaration and returning the inlisting money, and paying 20*s*. for the charges expended on him, together with the full rate allowed by law for the subsistence or diet and small beer furnished to such recruit subsequent to his inlistment, he shall be forthwith discharged, in For the relief persons hastily inlisting.

5 G. 4. c. 13. presence of such justice; but if he shall refuse or neglect in 24 hours to return and pay such money, he shall be deemed to be inlisted, as if he had given his assent thereto before such justice. If he declare that he voluntarily inlisted, the justice shall forthwith read over, or in his own presence cause to be read over to such person the 3d and 4th articles of the 2d section, and the 1st article of the 6th section of the articles of war, and shall tender and administer to him not only the oath of fidelity therein mentioned, but also the oath mentioned in the schedule marked (A.); or if the person shall be desirous of inlisting without any limitation of period of service the oath in schedule (B.); and if he shall take the said oaths, then such justice shall certify under his hand the inlisting and swearing, together with the place of the birth, age, and calling (if known), of such person, in the form mentioned

A. in the schedule (C.), if the oath in the form (A.) shall have been

D. B. taken, and in the form marked (D.), if the oath in the form (B.) shall have been taken, except in the case of recruits inlisting either in H. M.'s or in the *East India* company's forces under stat. 39 *G.* 3. *c.* 109.; in which case each recruit shall, instead of the said oath of fidelity and that contained in the schedule (A.) or (B.), take the oath of allegiance directed by the 39th of the late king, and contained in schedule (E.); and the justice shall certify such inlistment and swearing according to schedule (F.); and except also recruits inlisted for the special purpose of serving in the *East Indies* in the *East India* company's forces, under stat.

G. H. 50 *G.* 3. *c.* 87. who shall take the oaths (G.) (H.) instead of the

A. B. oath of fidelity and the oaths (A.) (B.), and the justice shall cer-

I. tify according to the form (I.). And if any person so to be certified shall wilfully refuse to take the said oath of fidelity before such justice, the officer from whom he hath received such money may detain and confine him till he shall take such oath; and every military officer that shall act contrary hereto, or offend herein, shall incur the like penalty as is by this act inflicted for making a false muster, to be recovered as any penalties by this act are recoverable.

The third and fourth articles of the second section of the articles of war are these:—

Second section of the articles of war.

Art. 3. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause, or join in any mutiny or sedition, in the regiment, troop, or company to which he belongs, or in any other regiment, troop, or company, either of our land or marine forces, or in any party, post, detachment, or guard, on any pretence whatsoever, shall suffer death, or such other punishment as by a general court-martial shall be awarded.

Art. 4. Any officer, non-commissioned officer, or soldier, who, being present at any mutiny or sedition, shall not use his utmost endeavour to suppress the same, or coming to the knowledge of any mutiny, or intended mutiny, shall not without delay give information thereof to his commanding officer, shall suffer death, or such other punishment as by a general court-martial shall be awarded.

And the first article of the sixth section of the articles of war is as follows:—

Sixth section of the articles of war.

Art. 1. All officers, non-commissioned officers, and soldiers, in our service, who shall be convicted of having deserted the same,

shall suffer death, or such other punishment as by a general court-martial shall be awarded; and no non-commissioned officer or soldier who shall desert our service shall be exempt from such punishment by again inlisting into our service, but any such non-commissioned officer or soldier, shall notwithstanding such subsequent inlistment be reputed a deserter, and suffer accordingly. 5 G. 4. c. 13.

And the oath of fidelity is as follows:—

I SWEAR to be true to our sovereign lord king George, *and to serve him honestly and faithfully, in defence of his person, crown, and dignity, against all his enemies or opposers whatsoever: And to observe and obey H. M.'s orders, and the orders of the generals and officers set over me by H. M.* Oath.

§ 93. continued. Provided that every non-commissioned officer or private soldier, who shall inlist any recruit, shall, at the time of such inlisting, enquire the christian and surname, and place of abode of such recruit, and either take the same down in writing or give the same to the non-commissioned officer commanding the recruiting party to be so taken down.

Provided also, that any justice may discharge any person who shall have hastily inlisted, and who shall apply to him to declare his dissent within such four days as aforesaid, upon payment of the sum required to be paid by any recruit declaring his dissent under this act, notwithstanding no officer, non-commissioned officer, or private soldier, shall be with the recruit, if it shall appear to such magistrate upon the examination of such recruit, or of any other person that the recruiting party has left the place where such recruit was inlisted, or that such recruit could not procure any non-commissioned officer belonging to such party to go with him before the justice; and the sum paid by such recruit upon his discharge shall be kept by the justice, and paid when demanded to any person belonging to the recruiting party entitled thereto: provided also, that in every case wherein any person shall have received inlisting money, and shall have absconded or absented himself from the party as aforesaid, so that it shall not be possible immediately to apprehend him, and bring him before a magistrate, the officer or non-commissioned officer commanding the party, shall produce to the magistrate before whom the recruit would regularly have been brought for attestation, a certificate of the name and place of residence of such person, and the magistrate to whom the certificate shall be produced shall, after satisfying himself that the person who had absconded cannot be found and apprehended, transmit a duplicate thereof to H. M.'s secretary at war, in order that in the event of such person being afterwards apprehended and reported as a deserter, the facts of his having received inlisting money and having absconded may be ascertained before he be finally adjudged to be a deserter as having been duly enlisted. How justices may discharge persons hastily inlisting themselves.

§ 94. If any person shall receive the inlisting money, knowing it to be such, and shall abscond, or refuse to go before such justice, or shall thereafter absent himself and shall not voluntarily return, to go before such justice, under the provisions of this act, within such four days, he shall be deemed to be inlisted, and may be apprehended and punished as a deserter, or for being absent without leave under the articles of war, nor shall he be discharged Receiving the inlisting money, and absconding.

5 G.4. c.13.

after the expiration of such four days, unless it shall be proved to the satisfaction of such justice that his true name and residence were disclosed, and known to the recruiting party, and that no notice was given to him, or left at his last usual place of abode of his having so inlisted.

Persons concealing infirmities on inlisting may be transferred to garrison, battalions, &c.

§ 96. Any person who shall inlist, and be discovered to be incapable of active service, by reason of any infirmity which shall have been concealed by such person, or not declared before the justice at the time of his attestation, and mentioned at the foot thereof, may be transferred into any garrison, or veteran, or invalid battalion, or into his majesty's marine forces, notwithstanding he shall have inlisted for any particular regiment. See § 97.

Persons making false representations in order to obtain the bounty.

§ 97. Any person who shall knowingly, wilfully, and designedly make any false representation of any particular contained in the oaths (marked (A) and (B) and certificates marked (C) and (D) in the schedule) before the justice, at the time of his attestation, for the purpose of obtaining and shall obtain any inlisting money or bounty for entering the service, or any other money, shall be deemed guilty of obtaining money under false pretences, under stat. 30 *G.* 2.; (see title Cheat, Vol. I.) and the production of such certificate, and proof of the hand-writing of the justice giving such certificate, shall be sufficient evidence of such party having represented the several particulars contained in the oath sworn by him, and specified in the certificate of the justice at the time of inlisting; and proof by the oath of one or more credible witness or witnesses that the person so prosecuted hath freely and voluntarily declared or acknowledged that, at the time of his inlistment, he belonged to any regiment in H. M.'s service, shall be deemed and taken as evidence of the fact so by him declared or acknowledged, without the production of any roll or other document to prove the same.

Punishment of persons inlisted for concealing any infirmity.

§ 98. Any two justices of the peace before whom any person inlisted shall be convicted upon oath, of having wilfully concealed any such infirmity upon his being attested (*a*), or of having knowingly, wilfully, and designedly made any such false representation as aforesaid, are empowered to adjudge such person to be and to punish him as a rogue and vagabond.

Penalty for advertising for recruits without authority.

§ 100. All persons advertising, posting, or dispersing bills for procuring recruits or substitutes, or opening or keeping any house or place of rendezvous, purporting to be connected with the recruiting service, or department for the line, militia, or *East India* company, or interfering or being concerned therewith, (except such recruiting parties as may be stationed by the field-officers of districts), without the express permission in writing of the adjutant-general if for the line or militia, or of the court of directors if for the *East India* company's service, or receiving any person at his house or office under any such bill or advertisement on any pretence whatsoever, is liable to forfeit 20*l*. for every such offence, to be recovered on conviction before a magistrate, one moiety to go to the informer, and the other to the poor of the parish where such information shall be laid; and in default of payment thereof, to be committed to the common gaol or other public prison, at the discretion of the magistrate, for any period not exceeding three months nor less than one for each offence.

Penalty on apprentice inlisting.

§ 101. If any apprentice inlist and state to the justice that he

(*a*) *Sic*. query, 'enlisted.'

is not an apprentice, upon conviction he shall be liable to be imprisoned in any gaol or house of correction and kept to hard labour for two years, may be indicted and punished under stat. 30 *G.* 2. for obtaining money under false pretences, and shall after the expiration of his apprenticeship, whether so convicted and punished or not, be liable to serve as a soldier, and upon not delivering himself up to some officer authorised to receive recruits, may be taken as a deserter. 5 G. 4. c. 13.

§ 102. No master shall claim an apprentice unless bound for seven years, not having been above fourteen when so bound, nor unless he within one calendar month after the apprentice shall have absconded go before some justice, and take the oath (K.), and produce the certificate (L) in the schedule; which certificate such justice is required to give.

The apprentice must have been bound for seven years.

§ 105. The master of any apprentice inlisted, shall, upon his consenting to give up the indentures within one month afterwards, receive to his own use so much of the bounty payable to such recruit after deducting therefrom two guineas, which shall be reserved in order to provide him with necessaries, as shall not have been paid to such recruit before notice given of his being an apprentice.

Master consenting to give up indentures to receive part of the bounty.

§ 106. No apprentice claimed by his master shall be taken from the regiment, troop, or recruiting party with which he shall be, but under a warrant granted by some justice or magistrate residing near to the place where such apprentice shall happen to be when so claimed; and such justice may and shall, on proof on oath of notice having been given to the officer commanding the regiment or the recruiting part, with which such apprentice shall then be, or some non-commissioned officer of such recruiting party, of such warrant, and that a copy thereof has been left with such officer, and of such person being an apprentice, and having inlisted and declared that he was no apprentice, and on production and proof of the indenture of apprenticeship, commit such person so offending as aforesaid, if required so to do by such officer, to the common gaol of the county, or place where such person shall be at the time when he shall be so claimed by his said master, there to remain until he shall be discharged by due course of law, or, if not so required, to deliver such apprentice to his master.

Apprentices claimed by their masters shall be carried before a justice and committed.

§ 107. The justice before whom such person shall be taken may examine into the matter upon oath, and keep in his custody the indenture, and bind over the master and other persons he may think proper, to give evidence at the general or quarter sessions or session of *O. & T.* at which the trial of such person is to be had, and the production of the indenture with the justice's certificate that the same was proved before him, shall be sufficient evidence of the indenture of apprenticeship.

How a justice is to proceed with the examination of such apprentice

§ 108. The trial is to be at the sessions next after the offenders being brought before such justice, or the sessions immediately succeeding such next sessions, unless the court shall think fit to put off the trial on just cause.

At what sessions the trial is to be.

§ 111. No other person than an apprentice is after enlistment to be arrested or taken out of the service on account of any breach of contract or engagement to serve any master or employer whatever.

None but apprentices can be claimed back.

5 G.4. c.13.

Servants enlisting themselves entitled to wages up to inlistment.

§ 112. If any person who shall have been hired for a year or otherwise shall before the time expires inlist, he shall be entitled to such proportion of his wages as the magistrate shall think proper from his master for the time he shall have actually served, and the magistrate is to order and enforce the payment thereof within four days after the amount shall have been declared by him.

3. Muster.

§ 40. Musters are to be made of every regiment, troop, or company, twice a year at least.

Mustering in Westminster and Southwark.

§ 41. In *Westminster* and *Southwark* and liberties thereof, no muster shall be made by any officer, but in the presence of two or more justices (not being officers of the army), under the penalty of 50*l.* and forfeiture of his office; unless the justices, on forty-eight hours' notice to six of them, neglect to attend, in which case the muster may be made by the officer; provided oath be made, before any of H. M.'s justices, within forty-eight hours after such muster taken, that such notice was so given; which justices, so attending, are to sign the muster rolls, and to take cognizance of the muster, and to examine into the truth thereof before they sign the same.

Muster-rolls and pay-lists to be sworn before and attested by justices without fee.

§ 42. All muster rolls and pay lists which are required to be verified on oath are to be sworn before and attested by any justice of the peace without fee.

Giving a false certificate.

§ 43. If any person shall make or give, or procure to be made or given a false certificate to excuse any soldier for his absence from muster or other service, on pretence of being employed on some other duty of the regiment or of sickness, being in prison or on furlough, he shall forfeit 50*l.* and be cashiered and disabled to hold any military office. And no certificate shall excuse the absence of any soldier, but for the reasons abovementioned, or one of them.

Penalty on officers making false musters, &c.

§ 44. Every officer making false musters, or who shall willingly allow or sign the muster-roll, wherein such false muster is contained, or any duplicate thereof; and also who shall directly or indirectly take, or cause to be taken, any sum of money, or any other gratuity, on or for the mustering, or on or for the signing of any muster-rolls, or any duplicate thereof, shall upon proof on oath by two witnesses before a general court martial, be forthwith cashiered, and be thereby utterly disabled to have or hold any civil or military office or employment.

Being falsely mustered, &c.

§ 46. If any person shall be falsely mustered or offer himself falsely or deceitfully to be mustered; on proof thereof by oath of two witnesses before a justice, and on certificate thereof under the hand of the officer appointed to take the muster, such justice shall commit the offender to the house of correction for ten days: and if any person shall wittingly lend or furnish a horse to be mustered which shall not belong to the troop or trooper mustered, it shall be forfeited to the informer, if it shall belong to the person so furnishing it; otherwise he shall forfeit to the informer 20*l.* on oath by two witnesses, before a justice, to be levied by distress; and if he shall not have sufficient goods or shall not pay in four days after conviction, he shall by such justice be committed to the common gaol for three months, or be publicly whipped, at the dis-

cretion of the justice; and the informer, if belonging to the service, shall be discharged if he demand it. 5 G. 4. c. 13.

§ 47. Relates to the muster-rolls ten miles distant from *London*.

4. Carriages.

Carriages provided.

§ 73. & 74. For provision of carriages for the forces in their march or for their arms, clothes, or accoutrements, any justice being duly required by an order from H. M. or the general of his forces, or the master-general or lieutenant-general of H. M.'s ordnance or other person duly authorised, shall, as often as such order is brought and shewn unto him by the quarter-master, adjutant, or other officer of the regiment, ordered to march, issue out his warrant to the constables or petty constables, or to any constable or constables acting or having authority to act in the division, from, through, near, or to which such regiment shall be ordered to march; requiring them to make such provision of carriages and horses or oxen, with able men to drive the same, as is mentioned in the said warrant; allowing them sufficient time to do the same, that the neighbouring parts may not always bear the burthen; and specifying therein the places from and to which the said carriages shall be required to travel, also the number of miles between the places, for which number only the constables are to demand payment, which shall not exceed the day's march of the troops prescribed in the order, unless in case of necessity, and shall in no case exceed twenty-five miles from the place at which the march shall commence; and if sufficient carriages cannot be provided within any such division, then the justice of the next adjoining county, or division, shall, on such order so brought or shewn to him, issue his warrant to the constables or petty constables of such next county or division, as shall be most convenient for the purposes aforesaid, to make up such deficiency.

[Which warrant may be thus:]

Westmorland.—To the constable of ———

BY virtue of an order from ———, *general of his majesty's forces, this day brought and shewn unto me,* ———, *one of his majesty's justices of the peace for the said county, by* ——— *lieutenant in captain* ———*'s company of his majesty's* ——— *regiment of foot, commanded by* ———, *you are hereby required to provide* ——— *sufficient carriages, with* ——— *able men to drive the same,* [or as the case may be, *saddle horses, chaises, four-wheeled carriages usually let to hire, or kept for that purpose, boats, barges, or other vessels used on canals or navigable rivers, with able horses and men to drive or navigate the same,*] *within your constable-wick, whereby to remove the arms, clothes, and accoutrements,* [or, *the officers, soldiers, servants, women, children, or other persons,* as the case may be], *of the said company on their march from* Shap *to* Kirkby *in* Kendale *in the said county, being* ——— *miles, and with them you are to appear at* Shap *aforesaid to-morrow precisely at five of the clock in the morning;* [*for which carriages so to be provided the following increased rates per mile are to be paid, pursuant to the order of his majesty's justices of the peace assembled at the last general quarter sessions of the peace for this county,* viz.—

5 G. 4. c. 13. [here state the increased rates if any such have been made.]. *Herein fail not, at your peril. Given under my hand and seal the ——— day of ——— 18—.*

Allowance by the regiment for waggons, wains, and carts.

And the officer who by virtue of the said warrant is to demand the carriages of the constable to whom it is directed, shall at the same time pay down to him in hand for the use of the persons who shall provide such carriages and men, the sum of 1*s.* for every mile any waggon with four or more horses shall travel; 1*s.* for every mile any wain with six oxen or four oxen with two horses shall travel; 9*d.* for every mile any waggon with narrow wheels or any cart with four horses, or carrying not less than 15 cwt. shall travel; and 6*d.* *per* mile for every cart or other carriage with less than four horses, and not carrying 15 cwt.; or any further sum not exceeding 4*d.* *per* mile for every waggon with four or more horses, or any wain with six oxen, or with four oxen and two horses; and not exceeding 3*d.* *per* mile for any cart with four horses, or carrying not less than 15 cwt.; and not exceeding 2*d.* for every mile any cart or carriage with less than four horses, and not carrying 15 cwt. shall travel; according as the same shall be fixed and ordered by the justices for the county or district assembled at any general sessions, regard being had to the price of hay and oats, and specifying in this order the average price thereof at the nearest market town at the time of fixing such additional rates; for which sums so received the constable shall give a receipt to the person paying the same, which receipt need not be stamped.

Provided that where the day's march exceeds fifteen miles, further compensation shall be made as shall be deemed reasonable by the magistrate who granted the warrant, not exceeding the usual hire of such carriages. And provided that every order of the justices at sessions fixing a further sum in addition to the customary rates of 1*s.*, 9*d.*, and 6*d.* *per* mile, shall specify the period for which the same shall be in force, and which shall not exceed ten days beyond the next general sessions; and a copy of the said order to be signed by the chairman and one other justice at the quarter sessions at which the same shall be made shall within three days be transmitted to the secretary at war; and, unless so transmitted, no such order shall be valid.

Provided also, that if any further sum be allowed for the hire of any carriage, the justice granting or signing the warrant shall insert in his own hand the amount of such further sum for each description of carriage as so authorised at sessions and the date of the order of the said justice, and such warrant shall be given to the officer commanding the party, requiring such carriages as his voucher for payment, and no further sum shall be demanded, but such as shall be so inserted by the justice in the warrant.

Constables to order carriages.

And such constable shall order and appoint such persons having carriages within their respective liberties, as they shall think proper to provide and furnish carriages and horses, and oxen and men, according to the warrant aforesaid; and no person shall be subject to any penalty, nor shall any such waggon be stopped by reason of any weight therein, or of being drawn by any number of horses or oxen, but it shall be lawful to put any additional number of horses or oxen to those prescribed or paid

for under this act. And if any military officer for the use of whose regiment the carriage was provided, shall force any carriage to travel beyond the distance specified in the magistrate's warrant; or shall not discharge the same in due time for their return home the same day if it be practicable; or shall suffer any soldier or servant (unless sick) or woman, to ride in such carriage; or shall force any constable, by threatening words, to provide saddle horses for themselves, or servants, or shall force horses from the owners, by themselves, servants, or soldiers, he shall forfeit 5*l.* upon proof made on oath before two justices, who shall certify the same to the secretary at war, who shall give orders for payment of the same according to the order of the said justices under their hands and seals, and for deducting the same out of the officer's pay. 5 G. 4. c. 13.

§ 75. To remedy the inconvenience arising from there being no justice near to the halting places of soldiers on their march, it shall be lawful for any constable duly authorised by warrant under the hand and seal of any justice residing nearest to such places, to give orders for providing carriages without having any special or particular warrant for that purpose: Provided that the justice at the time of giving such warrant and thereafter, once in every year or oftener if necessary, cause a list to be made out, and which is to be open for inspection, of all persons liable to furnish such carriages, and of the number and description of carriages belonging to them respectively; and all orders and appointments for carriages are to be taken from such list in regular rotation, as far as the same can be done.

Provision in case there shall be no justice near to the halting places of soldiers on their march.

§ 77. In cases of emergency it shall be lawful for H. M., by his order distinctly stating that a case of emergency exists, signified by the secretary at war to any general or field-officer commanding in any district or place, or to the agent for the supply of stores and provisions at home, or person acting in that capacity, to authorise such general or field-officer, or agent, or person aforesaid, by writing under his hand reciting such order of H. M., to require all justices, within their several counties, to issue their warrants for any of the purposes hereinafter mentioned; and the justices shall, as often as such requisition in writing shall be shewn unto any one or more of them by the quarter-master, adjutant, or other officer of the regiment so ordered to be conveyed, or by any officer in the commissariat department, issue their warrants to the constables, or petty constables of the county or division from, through, near, or to which such regiment shall be so ordered to be conveyed, requiring them to make such provision not only of waggons, wains, carts, and cars, kept by or belonging to any person, and for any use whatsoever, but also of saddle horses, coaches, chaises, and other four-wheeled carriages usually let to hire or kept for that purpose; and also of boats, barges, and other vessels used for the carriage of any articles whatsoever upon any canal or navigable river, with able men and horses to drive, navigate, and draw the same, as shall be mentioned in the said warrants, therein specifying the place or distance to which such horses, carriages, boats, barges, or other vessels and men shall go and be conveyed, and allowing such constables sufficient time to make such provision, that the neighbouring parts may not always bear the burthen; and in case suf-

In cases of emergency, justices may be required to issue warrants for providing horses and carriages let to hire, and also vessels with men and horses.

5 G. 4. c. 13.

ficient means of conveyance cannot be provided within any such county or division, then the next justice or justices of the next county or division, shall upon such requisition as last aforesaid being shewn to any one or more of them, by any of the officers aforesaid, issue their warrants to the constables of such next county or division for the purposes last aforesaid, to make up such deficiency; and the aforesaid officers who by virtue of the aforesaid warrants from the justices are to demand the means of conveyance therein mentioned of the constables, to whom the said warrants shall be directed, are at the same time to pay down in hand to the said constables for the use of the persons providing the same, such reasonable sums as the said justices shall by their said warrants order, not exceeding the usual rate and hire of such and the like means of conveyance, according to the length of the journey or voyage in each particular case, but making no allowance for post-horse duty, or turnpike, canal, river, or lock tolls (which duty or tolls are hereby declared not to be demandable or payable in such cases for any such means of conveyance whilst employed in such service or returning therefrom); for which said sums so received, the said constable is to give a receipt in writing, without stamp, to the person paying the same; and such constables shall appoint such persons having such means of conveyance, within their respective liberties, as they shall think proper, to provide the same according to the warrant aforesaid, who shall provide the same accordingly; and in such cases every military officer for whose use, or for whose regiment such provision shall be made, may convey on the same respectively, not only the arms and equipage of such regiment, but also the officers, soldiers, servants, women, children, and other persons belonging to the same; but if any such officer shall force any horse, carriage, boat, barge or other vessel, to proceed beyond the distance or place specified in such warrant, without the special licence or order of one or more other such justice or justices, to be given at their reasonable discretion, he shall for every such offence forfeit 5*l*., proof thereof being made upon oath before two justices of the same county or place, who are to certify the same to the secretary at war, who is to give order for payment of such 5*l*., according to the order and appointment, under the hands and seals of the aforesaid justices, and for deducting the same out of such officer's pay.

Officers demanding them to pay as the justices shall direct, not exceeding the usual rates, but making no allowance for post-horse duty or tolls, which in such cases are not demandable.

Penalty on officers forcing horses, &c. to travel beyond the distance specified in warrant, without licence.

Weights.

§ 78. No waggon, wain, cart, or carriage, shall be liable to carry above thirty hundred weight. [But by the annual act for regulating the royal marine forces while on shore, (See 5 *G*. 4. *c*. 14. § 48.) such carriage is not obliged to carry above *twenty* hundred weight.]

Constables neglecting their duty.

§ 82. If any constable shall wilfully neglect or refuse to execute such warrants, or shall demand or receive for the owners more than the rates aforesaid, or if any person appointed by such constable to furnish any such means of conveyance shall refuse or neglect to provide the same; or if such or any other person shall wilfully hinder the execution of such warrant, he shall forfeit not exceeding 5*l*. nor less than 40*s*. to the poor of the parish or parishes adjoining the parish where such offence shall be committed as shall be fixed upon by the justice by whom the offence shall be enquired of; the same to be heard and determined by any one justice dwelling in or near the place, who may cause the

penalty to be levied by distress and sale of the offender's goods and chattels. 5 G.4. c. 13.

§ 84. All H. M.'s officers and soldiers, in proper staff or regimental uniform, and their horses on duty or on the march, and all carriages and horses belonging to H. M., or employed in his service, and returning therefrom, or employed in his service when conveying the officers, soldiers, servants, women, children, or other persons of or belonging to H. M.'s forces, or the arms and equipage belonging thereto, or any public stores belonging to H. M., or for the use of H. M.'s forces, or returning therefrom, shall be exempted from payment of any duties and tolls otherwise demandable by virtue of any act made or hereafter to be made for persons, horses, or carriages, or the baggage of any troops embarking or disembarking from or upon any pier, wharf, quay or landing place, or passing turnpike roads or bridges, unless by such act it be expressly provided that the said officers, soldiers, carriages, and horses are, and shall be liable equally with others to the duties and tolls therein authorised to be taken; provided that nothing herein contained shall exempt from payment of tolls any vessels employed in conveying troops, arms, or military stores along any canal.

Officers and soldiers on duty and carriages to pass toll free, unless otherwise provided by the particular turnpike act.

Barges, &c. not exempted from toll.

§ 85. To remedy the insufficiency of the sums to be paid to the constables by the officers demanding such means of conveyance, it is enacted, that the treasurer of the county shall without fee pay unto such constable all reasonable sums by him laid out, over and above what was or ought to have been paid by the officer requiring the same, out of the public stock of the county, according to such rates and orders as the justices in quarter sessions shall direct, which orders shall be made without fee; regard being had to the season of the year, and the length and condition of the ways.

Allowance from the county.

By § 86. If the public stock be not sufficient to satisfy such extraordinary charge, it may be raised as the justices raise money for county gaols and bridges.

Rex v. *Hunt and others*, 1 *Str.* 42. 93. The court granted a *mandamus* directed to the justices of the peace, to allow the defendants, being constables, the extraordinary charges in providing carriages in the expedition into *Scotland*.

5. Billeting.

By stat. 31 *C.* 2. *c.* 1. § 54. No officer, civil or military, nor other person, shall presume to place, quarter, or billet any soldier on any subject or inhabitant of this realm, of any degree, quality, or profession whatsoever, without his consent; and every such subject or inhabitant may refuse to quarter any soldier, notwithstanding any command, order, warrant, or billeting whatever.

31 C. 2. c. 1. Soldiers not to be quartered on inhabitants without their consent.

By the *mutiny act*, 5 *Geo.* 4. *c.* 13. § 48. The constables and other chief officers and magistrates of cities, towns, villages, and other places, and in their default or absence, any one justice inhabiting in or near such place, and no other, shall and may, during the continuance of this act, quarter and billet officers and soldiers in inns, livery-stables, alehouses, victualling-houses, and the houses of sellers of wine by retail to be drunk in their own houses or places thereunto belonging, (other than canteens held under the authority of the commissioners for the affairs of barracks,

5 G.4. c.13.

By and on whom to be billeted.

5 G. 4. c. 13.

or of the department of the ordnance, and other than persons who keep taverns only, being free of the vintners' company in *London*, notwithstanding such persons who keep taverns only have taken out victualling licences;) and all houses of persons selling brandy, strong waters, cyder, or metheglin, by retail to be drunk in houses, (other than the houses of distillers who keep places for distilling brandy and strong waters, and of shopkeepers (*a*) whose principal dealings shall be more in other goods than in brandy and strong waters, and who do not permit tippling in their houses,) and in no other, and in no private houses whatsoever: nor shall any more billets be ordered than there are effective soldiers; which billets when made out shall be delivered to the commanding officer present: and if any constable, or such like officer or magistrate as aforesaid, shall presume to billet any such officer or soldier in any private house without the consent of the owner or occupier, such owner or occupier shall have his remedy at law against such magistrate or officer, for damages sustained thereby; and if any military officer shall take upon him to quarter soldiers otherwise than according to this act, or shall offer any menace or compulsion to any mayor, or other civil officer before mentioned, tending to discourage any of them from doing their duty, he shall on conviction before any two justices by the oath of two witnesses be *ipso facto* cashiered and disabled to hold any military employment; provided the conviction be affirmed at the next quarter sessions of the county, and a certificate thereof be transmitted to the judge advocate, who shall certify the same to the commander-in-chief and secretary at war. And if any person shall be aggrieved by having more soldiers billeted than in proportion to his neighbours, on complaint thereof to one justice of the division, where quartered, or if the person so billeting them be a justice, then on complaint to two justices, they may relieve him, by ordering so many of the soldiers to be removed, and quartered upon such other person as they shall see cause, and such other person shall receive them accordingly.

Limitation as to distance in billeting.

§ 50. At no time when troops are on a march, shall any of them be billeted above one mile from the place or places mentioned in the route.

For the more equal billeting of soldiers on the borders of counties.

§ 51. Soldiers and their horses on a march are to be billeted in a just proportion upon the keepers of all houses within one mile of the place mentioned in the route, although some of such houses may be in the adjoining county, in like manner as if they were locally situate within such place; but the constable is not to billet or quarter soldiers out of his county if the constable of the adjoining county shall be present and undertake to billet and quarter the due proportion of men in such adjoining county.

Justice having any military command.

§ 54. No justice, having or executing any military office or commission, shall be concerned in quartering, billeting, or appointing quarters for any soldiers under his immediate command; but all things done by him therein shall be void.

Quartering dragoons.

§ 57. The officers, men, and horses, belonging to his majesty's horse or dragoons, and also all bat and baggage horses belong-

(*a*) Note. By stat. 17 *G.* 2. *c.* 17. no shopkeepers, as such, are allowed to retail any spirituous liquors, but only those who keep taverns, victualling-houses, inns, coffee-houses, or ale-houses.

ing to any of H. M.'s other forces, and also the horses belonging to staff and field officers in his majesty's forces when upon actual service, not exceeding for each officer the number for which forage shall be allowed by H. M.'s regulations, shall be quartered and billeted in the inns, livery-stables, and other houses in which officers and soldiers are by this act allowed to be quartered and billeted, and they shall be received and furnished by the owners or occupiers of such inns with diet and small beer, and with stables and hay and straw for such horses, paying and allowing for the same the several rates that are or shall be established by any act in force in that respect. 5 G.4. c.13.

§ 59. The allowance of 4*d*. per week heretofore made to innkeepers or others for each horse billeted on them for the use of the stall when the forage has been furnished by contract, is to continue to be paid only during the time when such horse shall be provided with hay and straw by contract, and not by such innkeepers or other owners or occupiers as aforesaid.

Allowance of 4d. per week for every horse for the use of the stall, to be paid only when hay and straw shall be provided by contract.

§ 60. When any horse or dragoon shall be quartered upon any person who hath no stables, upon his complaint to two justices of the division, and his making such allowance as such justices shall think reasonable, they may order the men and their horses, or the horses only, as the case may be, to be removed and quartered upon some other person who hath stables, and may order and settle a proper allowance to be made by the person having no stables, in lieu of his quartering such horse or dragoons, and order payment thereof to the person to whom the removal is made, or to be applied for the furnishing of quarters for such men and their horses.

Cavalry quartered upon person having no stables may be removed.

§ 61. In all places where horse or dragoons shall be quartered or billeted for the future, the men and their horses shall be billeted in one and the same house (except in case of necessity); and in no other case whatsoever shall there be less than one man billeted where there shall be one or two horses, nor less than two men where there shall be four horses, and so in proportion for a greater number; and in such case each man shall be billeted as near his horse as possible.

Men and horses to be billeted in the same house.

§ 62. Exchange may be made by the commanding officer of any men or horses quartered in any place, provided the number of men or horses do not exceed the number, at that time billeted on such house; and the constables shall billet the same accordingly.

Exchange of men and horses.

§ 63. An officer taking money for excusing the quartering, shall be cashiered.

Officers receiving a bribe.

§ 64. If any high constable or other officer or any person whosoever shall neglect or refuse to quarter any officers or soldiers on duty, provided sufficient notice be given before their arrival, or if he receive, demand, contract, or agree for any reward in order to excuse any person from receiving such officer or soldier, or if any victualler or any other person liable to have any soldier billeted upon him, shall refuse to receive or to afford proper accommodation to, or to victual any such soldier, or shall refuse to furnish or allow the same according to the direction of this act the several things respectively demanded to be furnished or allowed to non-commissioned officers or soldiers, or to furnish good and sufficient stables with good and sufficient

Neglecting to quarter and refusing to receive soldiers.

G.4. c. 13. hay and straw for each horse at the rate established by any act in force in that respect, and shall be thereof convicted by one justice of the county, where such offence was committed, on confession or the oath of one witness, he shall forfeit not more than 5*l.* nor less than 40*s.* to be levied by distress, which sum shall be applied first to satisfy such soldier for the expence thereby occasioned to him, and the remainder to the overseers of the poor of the parish where the offence was committed.

Justice may require from constables accounts of soldiers billeted.

§ 65. Any justice may, by warrant or order under his hand and seal, require any constable, who shall billet any soldier, to give an account in writing to him of the number of soldiers who shall be billeted by him, and the names of persons on whom billetted, together with an account of the street or place where such house-keeper dwells, and of the signs (if any) belonging to their houses.

Justice may extend route and quarters.

§ 66. Any justice at the request of any officer commanding any soldiers requiring quarters, in any case in which it shall appear to such officer or justice that better accommodation can be given to the troops by extending any route, or enlarging the district within which such quarters shall be required, may enlarge such route, and extend such quarters as shall be most convenient to the troops to be quartered.

To be furnished with diet and small beer.

§ 67. Officers and soldiers billeted as aforesaid, shall be received and furnished with diet and small beer, paying for the same the several rates established by any act in force in that respect. (See stat. 5 *G.*4. *c.*31. *post,* p. 381.)

Soldiers providing the victuals.

§ 68. If any person or persons where soldiers shall be quartered shall choose rather to furnish non-commissioned officers or private men, (except on a march, or employed in recruiting, and likewise except the recruits by them raised, for the space of seven days at most,) with candles, vinegar, and salt, *gratis,* and allow them the use of fire, and the necessary utensils for dressing and eating their meat, and shall give notice thereof to the commanding officer, and shall furnish the same accordingly; in such case they shall provide their own victuals and small beer, and the officer who receives their pay shall pay the sums to be payable out of the subsistence money for diet and small beer to them, and not to the persons on whom they are quartered.

Officers receiving the pay, to settle the demands of innkeepers.

§ 69. Every officer receiving the pay or subsistence money, either for a regiment, or particular troops and companies, or otherwise, shall every four days, or before the troops shall quit their quarters, if they shall not remain so long as four days, settle the just demands of all persons keeping inns or other places where soldiers are quartered, out of their pay and subsistence, before any part of the pay or subsistence be distributed.

Penalty on officer's not paying subsistence money.

And if such officer shall not satisfy and pay the same; upon complaint and oath made by two witnesses at the next quarter sessions for the county or city where such quarters were, the secretary at war shall (upon certificate of the said justices before whom such oath was made, of the sum due upon such accounts, and the persons to whom the same is owing) give orders to the agent of the troop or company to pay the same, and charge the same to such officer.

If quarters be not paid for before the march.

§ 70. If any troop or company be suddenly ordered to march, and the respective commanding officers are not enabled to make payment of the sums due for the lodgings of the men and

stabling for the horses, every such officer shall before his departure make up the account with every person with whom such troop or company may have been quartered, and sign a certificate thereof, which account and certificate shall be transmitted to the agent of the regiment, who shall make payment immediately.

5 G.4. c.13.

ing of the troops, certificate of the amount to be transmitted to the agent.

Wives, children and servants of soldiers.

§ 71. If any officer military or civil shall quarter any of the wives, children, or servants of officer or soldier, in any house against the consent of the owner; if he be an officer, he shall, upon being convicted thereof before a general court-martial, be cashiered; and if a civil officer, he shall forfeit to the party grieved 20*s.* on complaint and proof thereof to the next justice to be levied by distress, rendering the overplus (if any) after deducting reasonable charges in taking the same.

5 G.4. c.31.

Diet and small beer in quarters in England.

By stat. 5 *G.*4. *c.*31. for fixing the rates of subsistence to be paid to innkeepers and others on quartering soldiers, (the act for that purpose being passed annually) and which is to continue in force until the 25th *March*, 1825; every non-commissioned officer and private soldier who shall be furnished with diet, and small beer, shall pay for the same the sum of 1*s. per diem;* and for such allowance the innholder or other person shall furnish one meal; *videlicet,* a hot dinner if required in each day, to each non-commissioned officer, trumpeter, drummer, and private soldier quartered and billeted on him, to consist of such quantities of diet and small beer as shall have been or shall be specified by any regulations made by his majesty in that behalf, but not to exceed one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables previous to being cooked, and two pints of small beer, and vinegar, salt, and pepper; and the accounts of the same shall be rendered, and payment thereof made, as is directed by the mutiny act.

§ 2. Where the innholder shall furnish the articles specified in the mutiny act, in lieu of diet and small beer, he shall have one halfpenny *per* day for each non-commissioned officer and soldier.

§ 3. 10*d. per* day is to be paid for each horse for hay and straw.

On the march.

§ 4. All non-commissioned officers and soldiers shall receive their diet and small beer at the above rates while on the march, and on and for the day of arrival at the place of their final destination, and on the two subsequent days, unless either of the two be a market day for the place where billeted, or within two miles thereof; in which case the innkeeper may discontinue on and from such market day the diet and small beer, and furnish in lieu thereof the articles in the said act specified, and at the rate in this act prescribed.

§ 5. If any person liable to have soldiers quartered on him shall pay any sum to any non-commissioned officer or soldier on the march in lieu of the diet and small beer, he may be proceeded against and fined as if he had refused to furnish the things to be provided by him.

§ 6. The provisions of § 4. are extended to halting on a march.

§ 7. But if it appear by the marching orders that the halt is not intended for a longer time than one day after the day of arrival, and the day after such arrival be market-day as aforesaid, there is to be no discontinuance of diet and small beer.

5 G. 4. c. 31.

Recruits.

§ 8. Non-commissioned officers and private men employed in recruiting, and the recruits by them raised, shall, while on the march, and for two days after the day of their arrival at any recruiting station, be entitled to the same benefits as before provided for troops on the march; but no recruit enlisted after the two days subsequent to the arrival of the party at their recruiting station, shall be entitled to be supplied with diet and small beer at the rates herein-before prescribed, except at the option of the person on whom quartered. Provided, that in case any recruiting party, with the recruits by them raised, shall remove from their station, and after a time shall return to the same place, they and the recruits shall not be again entitled to the diet and small beer for two days, unless their time of absence exceeded twenty-eight days.

6. To remove in time of Elections.

8 G.2. c.30.

By stat. 8 *G.* 2. *c.*30. On notice from the clerk of the crown to the secretary at war, of any writ made out for the election of a member to serve in parliament, he shall send orders for removing soldiers two miles or more from the place of election, at least one day before the election, and not to make any nearer approach thereto, until one day at the least after the poll taken; but this not to extend to *Westminster*, or other place of residence of the royal family, or fortified places, or any officer or soldier having a right to vote at such election.

7. Examination as to their Settlements.

5 G.4. c.13.

By stat. 5 *G.* 4. *c.*13. § 72. If any non-commissioned officer or soldier have a wife, child or children, any justice for the place where he is quartered may summon him in order to make oath of the place of his last legal settlement, and such non-commissioned officer and soldier shall obey such summons and make oath accordingly. And the justice shall take his examination in writing, and give an attested copy thereof to the person so examined, to be by him delivered to his commanding officer to be produced when required; which examination and such attested copy shall be at any time admitted as evidence as to such last legal settlement before any justice of the peace, or at any general or quarter sessions of the peace, although such non-commissioned officer or soldier be dead or absent from the kingdom: Provided, that in case he shall be again summoned to make oath as aforesaid, then on such examination or such attested copy thereof being produced by him or any other person on his behalf, he shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination if required.

See title Evidence, Vol. I. and title Poor, (*Removal,*) Vol. IV.

8. Destroying the Game.

§ 90. If any officer or soldier shall, without leave of the lord of the manor under his hand and seal, take, kill, or destroy any hare, coney, pheasant, partridge, pigeon, or other sort of fowls, poultry, or fish, or H. M.'s game, and on complaint thereof be con-

victed on oath of one witness, before any justice; every officer so offending shall forfeit *5l.* to be distributed among the poor of the place where the offence shall be committed; and the commanding officer in chief upon the place, for every offence committed by any soldier under his command, shall forfeit *20s.*, to be paid and distributed in manner aforesaid. And if, upon conviction by the justices, and demand thereof made by the constable or overseers of the poor, he shall not in two days pay the said penalties, his commission shall be null and void. 5 G.4. c.13.

9. Arrest for Debt.

§ 124. No person who is or shall be listed, or who shall list and enter himself as a volunteer, shall be taken out of the service, by any process or execution, other than for some criminal matter, unless for a real debt, or other just cause of action, and unless, before taking out such process, affidavit be made before a judge of the court of record or other court out of which such process or execution shall issue, or before some person authorised to take affidavits in such court, that the original sum due amounts to *20l.* over and above all costs in the same action, or in any other on which the same shall be grounded, a memorandum of which oath shall be indorsed on the process; and if he shall be nevertheless arrested, the judge may discharge him and award costs.

Not to be arrested for a deb under 20l. or some criminal matter.

§ 125. The plaintiff, on notice given in writing of the cause of action to such person, or left at his last place of residence before listing, may file a common appearance in an action to be brought for any debt, so as to entitle him to proceed therein to judgment and outlawry, and to execution, other than against his body.

Plaintiff may file a common appearance.

Other than for some criminal matter.] In *R.* v. *Archer*, 2 *T. R.* 270. and *R.* v. *Bowen*, 5 *T. R.* 156. it was decided by the court of *K. B.* that a soldier, in actual service, who had been committed for disobeying an order of justiees in a case of bastardy, was not protected by the provisions of the mutiny act.

A soldier disobeying a justice's order in a case of bastardy may be committed.

§ 16. This act shall not exempt soldiers from the ordinary process of law.

§ 17. If any officer or soldier shall be accused of any capital crime, or of any violence or offence against the person, estate, or property of any of the king's subjects, the commanding officer shall use his utmost endeavour to deliver over such accused person to the civil magistrate; and shall also be aiding to the officers of justice in seizing and apprehending him, in order to bring him to trial; on pain, on conviction, on indictment, or information at *Westminster*, of being *ipso facto* cashiered and disabled to hold any civil or military office.

Soldiers accused of crimes and offence.

§ 18. But no person acquitted or convicted of capital offences by the civil magistrate, shall be punished for the same by a court-martial, otherwise than by cashiering.

By stat. 19 *G.* 2. *c.*21. Soldiers convicted of profane cursing or swearing, and not paying the penalty, instead of being committed to the house of correction as other offenders, shall be put in the stocks for one hour for every single offence; and for any number of offences of which they shall be convicted at one and the same time, two hours.

19 G.2. c.21. Swearing.

10. Pay.

The *receiving pay as a soldier* subjects the receiver to *military jurisdiction*. On this account, therefore, the court of *C. P.* refused to grant a prohibition to prevent the execution of the sentence of a court-martial, passed against a man who had *received pay as a soldier* (but who had assumed the military character merely for the purpose of recruiting, in the usual course of that service), though the proceedings of the court-martial appeared in some instances to be erroneous. *Grant* v. *Sir Charles Gould and others*. 2 *H. Blac.* 69. *&c.*

5 G. 4. c. 13. Not to have pay while a prisoner, if taken by the enemy.

By stat. 5 *G.* 4. *c.* 13. § 127. No soldier confined for debt shall receive pay. Nor during the period of his remaining a prisoner (if taken by the enemy); but upon his return to H. M.'s service, due enquiry is to be made as to his conduct in relation to his having been made a prisoner, and during the period of his remaining such, and before return to service, by some court-martial; and if he prove to the satisfaction of the court, that he was fairly and unavoidably taken prisoner without wilful neglect of duty, that he hath not served with or aided the enemy, and that he returned as soon as possible to H. M.'s service, he is to be entitled either to the whole or such part of his arrears of pay as shall be adjudged by the court. And the secretary at war is empowered to issue the same as under the circumstances shall appear to be proper, notwithstanding any forfeiture, and before any such investigation, and from time to time to stop the continuance of any such issue as the case and conduct of any such soldier in relation to his capture, and not returning to H. M.'s service when enabled so to do, may require.

By § 19. Nor if confined on a charge for a criminal offence.

11. Desertion.

Constables may apprehend deserters.

§ 117. The constable or any officer or soldier may apprehend or cause to be apprehended any person reasonably suspected to be a deserter, and carry him before a justice in or near the place, who shall examine such suspected person; and if by his confession, or the oath of one witness, or the knowledge of such justice, he shall be found to be a listed soldier, and ought to be with his troop or company, the justice shall forthwith cause him to be conveyed to the gaol or house of correction, or other public prison in the town or place where he shall be apprehended, and transmit
N. an account thereof (N.) to the secretary at war; and the keeper of such prison shall receive subsistence for the maintenance of such deserter during the time he shall be in custody, as directed by H. M.'s regulations; and the keeper of every prison of the place in which the party conveying the deserter shall halt, shall receive the deserter on production of the warrant on which such deserter shall have been taken, or some order from the office of the secretary at war, and shall be entitled to 1*s.* for the safe custody of such deserter. And the secretary at war, upon receiving from the magistrate who shall have committed the deserter a report stating the name or names of the person or persons by whom the deserter was apprehended and secured, shall transmit

to such magistrate an order for the payment of 20*s*. to the person or persons so reported, if the secretary at war shall be satisfied that he or they is or are justly entitled to the same. 5 G. 4. c. 13.

Any person confessing himself a deserter to be deemed duly inlisted.

§ 119. Any person who shall voluntarily surrender or deliver himself up as a deserter from any regiment or corps of regulars or embodied militia, or the *East India* company's forces, or who, upon being apprehended for desertion or any other offence, shall in the presence of the magistrate confess himself to be a deserter from any such regiment, or corps, shall be deemed to have been duly inlisted, and to be a soldier, and shall be liable to serve in any such regiment as H. M. shall think fit to appoint, whether such person shall have been ever actually enlisted as a soldier or not.

§ 120. But no commissioned officer may break open any house to search for deserters without a justice's warrant, on pain of 20*l*.

Harbouring or assisting deserters.

§ 153. If any person shall harbour, conceal, or assist any deserter, he shall forfeit 20*l*.; and on conviction on the oath of one witness before any justice, the said penalty of 20*l*. shall be levied by distress: one moiety to be paid to the informer, and the other to the agent of the regiment or corps; and a report of the penalty being adjudged shall be made to the secretary at war by the justice imposing it, and if such offender have not sufficient goods whereon distress may be made to the value of the penalty, or shall not pay the same within four days after conviction, then such justice may commit him to the common gaol for six months: and if any persons shall knowingly detain, buy, or exchange or otherwise receive from any soldier or deserter, or any other person, any arms, ammunition, clothes, caps, or other furniture belonging to the king, or any meat, drink, beer, or other provision, or any sheets or other articles used in barracks provided under any regulations relating thereto, or any regimental necessaries, or shall cause to be changed the colour of any such clothes, he shall forfeit 5*l*.; and if any person shall buy or receive any oats, hay, straw, or other forage, provided for any horse belonging to H. M.'s service, from any dragoon or other soldier, knowing him to be such, or shall entice him to sell or otherwise dispose of the same, he shall for every offence forfeit 5*l*.; and on conviction by the oath of one witness before any justice, the said penalties shall be levied by distress; half of each penalty to be paid to the informer, and the residue to the agent of the regiment or corps to which the deserter did belong; and if such offender have not sufficient goods, or shall not pay the penalties upon conviction, or give sufficient security for payment within four days from such conviction, the justice shall either commit him to gaol for three months, or cause him to be publicly or privately whipped, at his discretion.

Receiving arms.

Oats, &c.

Persuading soldiers to desert.

§ 154. If any person shall persuade or procure any soldier to desert, he shall on conviction suffer such punishment by fine or imprisonment or both, as the court before which the conviction may take place shall adjudge.

Punishment of deserters.

By § 4. If the court-martial before whom a deserter (being a non-commissioned officer or soldier) shall be convicted, shall not think the offence deserving of capital punishment; they may, instead of awarding a corporal punishment, adjudge him to be transported as a felon for life or term of years; and if having been adjudged to be transported as a felon, he shall, without leave from H. M. or from the governor or commanding officer of the

5 G. 4. c. 13.

place to which he shall have been transported, return or be found at large, without leave as aforesaid or other lawful cause, before the expiration of the term limited by his sentence, and shall be convicted thereof in the ordinary course of law, he shall suffer death as a felon, without benefit of clergy.

§ 5. Where capital punishment has been awarded by a court-martial, H. M. may order transportation as a felon for life or for years, and if he return or be found at large before such term be ended, he shall suffer death as a felon, without benefit of clergy.

Deserters may be sentenced to general service,

§ 6. Any general or general regimental court-martial may sentence any non-commissioned officer or soldier, convicted of desertion, to general service as a soldier; and H. M. may direct the regiment in which such service shall be, and whether abroad or otherwise, as he may think fit.

or for life, &c.

§ 7. Deserters inlisted for limited service may be sentenced to serve for life, or for any number of years beyond the period for which they were inlisted, and also to forfeit all advantages to which they were entitled from the length of their services.

or to be branded.

§ 8. Any court-martial may direct a deserter, beside any other punishment, to be marked on the left side with the letter D.

37 G. 3. c. 70. Seducing soldiers, &c. or enticing them to mutiny, felony without benefit of clergy.

By stat. 37 *G.* 3. *c.* 70. [revived and made perpetual by stat. 57 *G.* 3. *c.* 7.] Any person who shall maliciously and advisedly endeavour to seduce any soldiers or seamen in the king's service from their allegiance, or to incite them to mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatever, shall, on being legally convicted of the offence, be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

Offence, where to be tried.

§ 2. And any such offence, whether committed at sea or in *England*, shall and may be tried before any court of oyer and terminer or gaol delivery for any county in *England*, in such manner and form as if the offence had been therein committed.

§ 3. No person who shall be tried and acquitted or convicted of any such offence, shall be liable to be indicted, prosecuted, or tried again for the same offence or fact, as high treason or misprision of high treason; nor shall this act be construed to extend to prevent any persons guilty of any such offence, and who shall not be tried for the same, from being tried for the same as high treason or misprision of treason, in such manner as if this act had not been made.

5 G. 4. c. 13. Justices may grant an extension of furlough to any non-commissioned officer or soldier applying for the same, on account of sickness, &c.

Stat. 5 *G.* 4. *c.* 13. § 121. Any inspecting field officer stationed on the recruiting service, or any officer of the rank of captain, or of superior rank, or any adjutant of the regular militia, stationed within the district, or if there be no such officer within a convenient distance, any justice may grant, in writing under his hand, an extension of furlough to any non-commissioned officer or soldier applying for the same on account of sickness or other casualty, which shall, on due enquiry, appear to render such extension necessary; and the officer or justice shall immediately certify the same, with the cause of its being so granted to the officer commanding the corps, depôt, or detachment to which the man belongs if known, if not, then to the agent of the regiment, in order that the proportion of pay to which the man shall be entitled may be remitted to him, according to the rules established in that respect; and such non-commissioned officer or soldier, during the period to

which his furlough shall have been so extended, shall not be liable to be apprehended or otherwise molested as a deserter from the regiment to which he shall appear by his furlough to belong, or if criminally absenting himself from the same: § 122. Provided that nothing herein shall exempt any such non-commissioned officer or soldier from being punished according to the provisions of this act, should it hereafter appear that he had obtained the extension of his furlough by false representation, or in applying for and obtaining the same, had committed any offence to the prejudice of good order and military discipline; and provided that no such furlough shall be extended for a longer period than one month, unless with the approbation of the general or other officer commanding the district where such soldier shall be, or of the officer commanding the corps or detachment to which the non-commissioned officer or soldier shall belong. 5 G.4. c.13.

§ 123. The subsistence of men on furlough is to be issued according to the rules which have been or shall be prescribed by H. M.'s regulations. See as to furlough of *Marines*, post, 15. Subsistence to men on furlough.

12. Setting up Trades after their Discharge.

By stat. 3 *G.* 3. *c.* 8. All officers, mariners, soldiers and marines, who have been at any time employed in the service of his late majesty, or of his present majesty, since the 29th day of *Nov.*, 1748, [by stat. 24 *G.* 3. *sess.* 2. *c.* 6.; 42 *G.* 3. *c.* 69., and 56 *G.* 3. *c.* 67. extended to those who have served up to the passing of the last mentioned act,] and have not deserted, and also their wives and children, may set up and exercise such trades as they are apt and able for, in any town or place, [by stat. 56 *G.* 3. *c.* 67. in any *city*, town or place] within the kingdom, without any molestation by reason of the using such trade; nor shall they or their wives or children during the time they shall exercise such trades be removable from such place to their last legal place of settlement by virtue of any law now in being relative to the settlement of the poor, until they shall become actually chargeable. And two justices may cause to be summoned before them such officer (*a*), mariner, soldier, or marine in the [city,] town or place where they shall exercise such trade, to make oath of the place of their last legal settlement; which summons they shall obey and make oath accordingly. And the justices shall give an attested copy of such affidavit so made before them, to the person making the same, in order that he may produce it when required. Which attested copy shall at any time be admitted as evidence as to such settlement, at any general or quarter sessions. And, if he shall be summoned again to make oath as aforesaid, on such attested copy being produced he shall not be obliged to make any further oath with regard to his settlement, but shall leave a copy of such attested copy of his examination if required; with a proviso that this act shall not be prejudicial to the privileges of the universities of *Oxford* and *Cambridge*, nor give liberty to any person to set up 3 G. 3. c. 8. May set up trades.

(*a*) In the power to summon on stats. 42 & 56 *G.* 3. the word "officer," is omitted, evidently by mistake, insomuch as it is inserted in every other part of the clause.

the trade of a vintner, or to sell wines or liquors therein, without licence from the vice-chancellor.

46 G.3. c.92. Seamen and soldiers to have the privilege of sending and receiving letters on payment of 1d. postage.

By stat. 46 *G.* 3. *c.*92. § 6, 7. & 8. (the provisions of which are by stat. 55 *G.* 3. *c.*153. § 25. extended to every seaman in H. M.'s navy, and every serjeant, corporal, drummer, trumpeter, fifer and private soldier in the regular militia, fencible regiments, artillery or royal marines whilst actually employed in H. M.'s service in the *East Indies*, and to every seaman, serjeant, corporal, drummer, trumpeter, fifer and private soldier in the service of the *East India* company, whilst actually employed therein.) Every seaman employed in H. M.'s navy, within any part of H. M.'s dominions, and every serjeant, corporal, drummer, trumpeter, fifer and private soldier in the regular militia, fencibles, artillery, or marines within any part of H. M.'s dominions whilst actually employed in H. M.'s service, are authorised to send and receive by the post on his and their private concerns, only single letters, upon payment of one penny each when put in the post office, provided that upon every such letter so to be sent *by* any seaman or soldier the name of the writer, and his class or description in the ship or vessel, or in the regiment, corps, or detachment to which he shall belong be superscribed, and that there be also written upon in it the hand-writing of, and signed by the officer, having at the time the command of the ship or vessel, or of the regiment, corps or detachment, his name, and the name of the ship or vessel, regiment, corps or detachment commanded by him. And that every such letter so to be sent *to* any seaman or soldier shall be directed to such seaman or soldier, specifying on the superscription thereof, the ship or vessel or the name of the regiment, corps or detachment to which he shall belong, and provided that it shall not be lawful for the deputy post-master of the town or place to which such letter shall be sent to be delivered, to deliver such letter to any person except the seaman or soldier to whom it shall be directed, or to some person appointed to receive the same, by writing under the hand of the officer, having the command of the ship or vessel, or of the regiment, corps or detachment to which such seaman or soldier shall belong.

13. Maintenance after their Discharge, and Pensions.

43 El. c. 3. Relief when sick, hurt, or maimed.

By stat. 43 *El.* *c.* 3. Every parish shall be charged with a weekly sum towards the relief of sick, hurt, and maimed soldiers and mariners, as the justices in sessions shall appoint: so as no parish be rated above 10*d.* nor under 2*d.* weekly; and so as the total sum in any county where there shall be above 50 parishes, do not exceed 6*d.* for every parish.

But this is not usually done, and they are therefore left to be provided for by the particular parishes whereunto they belong, or to the provisions of the royal hospitals of *Greenwich* or *Chelsea* respectively.

28 G.2. c. 1.

With regard to the out-pensioners of *Chelsea* Hospital, it is required by stat. 28 *G.*2. c. 1. § 2. that the justices of the peace shall take affidavits of their being alive (or of the time of their deaths respectively) half-yearly, without fee.

46 G. 3. c.69. All pensions to

By stat. 46 *G.*3. *c.*69. § 1, 2. For making better provision for soldiers, the payment of all pensions, allowances, and relief

granted or to be granted to disabled, invalid or discharged soldiers, shall be under the management, controul, and direction of the commissioners of *Chelsea* Hospital, (who are authorised to make such orders, rules and regulations, and from time to time to alter the same in relation to the payment thereof, and to require such proofs and affidavits as may be requisite for ordering and securing the same, provided that every such order or regulation may from time to time be revoked or altered by any warrant, order or instruction under H. M.'s royal sign manual. And by stat. 47 *G.3. sess.2. c.25.* § 1. the secretary of war and paymaster-general for the time being, are empowered to order and direct, that all pay, pensions and allowances to officers or their widows, or any person receiving any allowance or pension in the compassionate list, or any pension, allowance or relief in respect of military service shall be paid at or near to the places of their residence, in any part of H. M.'s dominions, or in foreign parts by any person appointed by the secretary at war, or paymaster-general, under the regulations established by the commissioners of *Chelsea* Hospital, or under such restrictions, or other or further regulations as may be established by the secretary at war and paymaster-general from time to time, for that purpose, subject by § 2. to revocation by H. M. as above mentioned.

46 G.3. c.69. — be under the management of the commissioners of Chelsea Hospital.

47 G. 3. sess. 2. c. 25. And the secretary at war, and paymaster-general may order payment to be made at the places of residence of pensioners, and they are also empowered to make regulations relating thereto.

By stat. 46 *G.3. c.69.* § 3. 5. Every soldier who shall become entitled to his discharge by the expiration of any period of service fixed by H. M.'s regulations, or as an invalid, or disabled, or having been wounded, shall be entitled to receive such pension, allowance or relief as shall have been fixed by H. M.'s regulations, in relation to such cases respectively, and in force at the time of his inlistment, provided that every soldier inlisted under any such orders or regulations as aforesaid, shall thenceforth remain entitled to all the benefit of all the provisions contained in H. M.'s regulations, as were in force at the time of his so inlisting, notwithstanding the same may be hereafter altered, varied or annulled and new regulations made in lieu thereof.

46 G. 3. c. 69. Discharged soldiers to be entitled to pensions according to H. M's. regulations at the time of their collecting.

§ 7. All assignments, bargains, sales, orders, contracts, agreements or securities whatsoever, which shall be given or made by any person entitled to any such pension, allowance or relief [and *pay* by stat. 47 *G. 3. sess. 2. c.25.* § 4.] for, upon or in respect thereof, shall be absolutely null and void.

All assignments of pensions void.

By stat. 47 *G.3. sess.2. c.25.* § 5. All sums of money to be paid under the provisions of this act, shall be paid without deduction or abatement, or any fee or reward whatever, although part thereof may be in fractions of the smallest denominations, under the penalty of 50*l.* for each offence, to be recovered with treble costs, in H. M.'s courts of record at *Westminster*, one half of which shall go to the person injured, and the other half to the person who shall sue for the same.

47 G. 3. c. 25. Pay, pension, &c. to be paid without deduction.

46 *G.3. c.69.* § 8. and 47 *G.3. c.25,* § 7. If any person shall [by the words of the former act] willingly and knowingly, [and of the latter act, wilfully and knowingly,] personate or falsely assume the name or character of, or procure any other person to personate or falsely to assume the name or character of any other person entitled or supposed to be entitled to any such pension, allowance or relief, [and by stat. 47 *G.3. sess.2. c.25.* § 7. *pay*], in order to receive the same or any part thereof, every such person so offend-

46 G. 3. c. 69. 47 G. 3. c. 25. Persons personating others entitled to pensions to be guilty of felony.

46 G. 3. c. 69. 47 G. 3. c. 25. ing, and being lawfully convicted thereof, shall be guilty of felony, and which offence against stat. 46 *G.* 3. is to be punished with death as in case of felony, without benefit of clergy, and against stat. 47 *G.* 3. by transportation for such period not exceeding 14 years, as the court shall adjudge.

And also persons forging the names of pensioners. By stats. 46 *G.* 3. *c.* 69. § 9. and 47 *G.* 3. *c.* 25. § 8. If any person shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in forging and counterfeiting the name or hand-writing of any person entitled to such pension, allowance or relief, [and by stat. 47 *G.* 3. *pay,*] or of any person or persons required by any rules or regulations made under and by virtue of these acts to sign any certificate, voucher or receipt in relation to the payment thereof, for and in order to the receiving or obtaining any money on any such pension, allowance, or relief, or shall utter any such, knowing the same to be forged or counterfeited, with an intention to defraud any person whatsoever, every such person so offending, being lawfully convicted, shall be guilty of felony, and which offence, against stat. 46 *G.* 3. is to be punished by transportation for life, or for such term of years as the court shall adjudge, and against stat. 47 *G.* 3. by transportation for such period not exceeding 14 years, as the court shall adjudge.

Justices, &c. may enquire into the truth of any certificate. Same acts, § 10 & 9. Any justice of the peace, receiver-general of the land-tax, collector of the customs or excise, is empowered to enquire into the truth of any certificate or voucher required by any such rules or regulations, and produced to him by any person claiming any pension, allowance or relief, [and *pay* by stat. 47 *G.* 3.] under any such certificate or voucher, or any person acting for him, by the oath or affirmation of the person producing the same, and upon being satisfied of the truth thereof to testify the same on the back of such certificate or voucher. And every person wilfully and corruptly swearing or affirming any matter or thing which shall be false or untrue, and being thereof convicted, shall be subject to the like pains and penalties as any person convicted of wilful and corrupt perjury is by law subject to.

Bills, &c. to be free from stamp duties. Same acts, § 11. & 6. All orders, receipts, &c. relating to any payments made under these acts shall be free from all stamp duties.

5 G. 4. c. 13. Parish apprentice not to be put on officers in barracks, &c. 5 *G.* 4. *c.* 13. § 113. No officer of H. M.'s forces residing in barracks or elsewhere under military law, shall be liable to have any parish poor child bound apprentice to him, but every such officer shall be wholly exempt from taking or receiving, or from having bound to him any such child.

14. Probate of their Wills, and Distribution of their Effects.

55 G. 3. c. 184. Exempted from the stamp duties. Stat. 55 *G.* 3. *c.* 184. Schedule, part 3. The probate of the will, letters of administration, and inventory of the effects, of any common seaman, marine or soldier who shall be slain or die in the service, shall be exempted from the stamp duties imposed by this act.

Regimental debts payable out of arrears of pay. By stat. 58 *G.* 3. *c.* 73. § 1. & 2. All sums of money due in respect of any military clothing, appointments and equipments, or of any quarters, mess or regimental accounts, or which shall be

due to any agent, paymaster or quartermaster, or any other officer upon any such account, or on account of any advances made for any such purpose, shall be deemed regimental debts, and paid out of any arrears of pay, or out of the effects or any prize or bounty money of any officer or soldier dying while in the service, in such proportion or priority as shall be ordered by the secretary at war for the time being, and in preference to any other debts, claims or demands upon the effects of such officer or soldier; and if any doubt arise, whether any claim or demand made, be a regimental debt, such question shall be decided by the order or certificate of the secretary at war, who is authorised to cause all surplus which may remain after satisfying such regimental debts to be paid to the persons entitled thereto. 58 G. 3. c. 73.

§ 3. All such regimental debts shall be paid without any probate of any will or letters of administration being obtained, and the surplus only of such arrears of pay and proceeds of any such effects shall be deemed the personal estate of the deceased, for the payment of any duty, or for distribution as personal estate. And the secretary at war may direct the distribution of any surplus not exceeding 20*l.* without any probate or letters of administration, or payment of any duty of stamps or upon legacies or otherwise.

Regimental debts to be paid without probate of will.

§ 4. No person, not being an agent of some regiment of the army or militia, shall receive for any non-commissioned officer or soldier, or for any representative of any non-commissioned officer or soldier any pay, or arrears of pay, or any effects of any deceased non-commissioned officer or soldier dying while in H. M.'s service, unless such person shall be entitled to receive the same as his devisee, next of kin, executor or administrator.

Restriction as to persons receiving pay.

§ 6. Every person who shall falsely represent himself or herself to be, or who shall personate a parent, child, brother, sister, or other relative of any non-commissioned officer or soldier, for the purpose of obtaining or receiving, or endeavouring to obtain or receive any pay or arrears of pay, or any effects, or proceeds of any effects, or any prize or bounty money, grant or other allowance of money of any deceased non-commissioned officer or soldier, and every person not being an agent authorised to receive any such money, or licensed as in this act is mentioned, who shall for gain, hire, pay, commission, or reward, act as an agent for any non-commissioned officer or soldier, or for any representative of such, relative to the applying for or receiving any such money or effects, or who shall directly or indirectly by himself or herself or any other person, for his or her use, take, accept or receive any gain, hire, pay, commission or reward for any matter or thing done in relation to applying for or receiving any such money or effects, for or for the use of any such non-commissioned officer or soldier, or for his representative, shall be deemed guilty of a misdemeanor, and be liable to be punished accordingly.

Persons falsely personating others or acting as agents not being authorised, to be guilty of a misdemeanor.

§ 7. There shall not be paid to any creditor taking out letters of administration to a deceased non-commissioned officer or soldier, out of his share of any prize or bounty money, grants or other allowances, any further or greater sum than shall appear, by affidavit to be made by the person taking out letters of administration, to be then due to him.

Creditor taking out administration to be entitled only to the sum due to him.

15. Royal Marine Forces whilst on Shore.

Marine forces whilst on shore. An act is passed annually for the better governing H. M.'s royal marine forces whilst on shore, according in most respects with the regulations for the army; but with some necessary variations in consequence of the marines being subject to the jurisdiction of the Admiralty.

Courts-martial. Thus the lord high admiral, or two or more commissioners for executing the office of lord high admiral are to form *articles of war*, and to constitute *courts-martial*.

Certificate of inlisting. The justice's certificate of *inlisting* is to set forth, that the second and third sections of the articles of war for the better government of H. M.'s royal marine forces, while on shore in *G. B.* or *Ireland*, were read to the person inlisted, and that he hath taken the oath of fidelity mentioned in the 12th section of the said articles of war.

The sections of the articles of war and the oath of fidelity above referred to are as follows;—

§ 2. Mutiny.

The penalty of speaking traitorous or disrespectful words against the king or any of the royal family. Art. 1. Whatsoever officer or private man shall presume to use traitorous or disrespectful words against the sacred person of H. M. or any of the royal family; if a commissioned officer, he shall be cashiered; if a non-commissioned officer or private man, he shall suffer such punishment as shall be inflicted upon him by the sentence of a court martial

The penalty of disrespectful behaviour to superior officers. Art. 2. Any marine officer or private man, who shall behave himself with contempt or disrespect towards his superior officers, shall be punished, according to the nature of his offence, by the judgment of a court martial.

The penalty of mutiny, Art. 3. Any marine officer or private man who shall begin, excite, cause, or join in, any mutiny, or sedition, in the company to which he belongs, or in any other company, troop, or regiment, either of marine or land forces in H. M.'s service, or on any party, post, detachment, or guard, on any pretence whatsoever, shall suffer death, or such other punishment as by a court-martial shall be inflicted.

and of not suppressing or the concealing of mutiny. Art. 4. Any marine, non-commissioned officer, or private man, who being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same, or coming to the knowledge of any mutiny, or intended mutiny, does not without delay give information thereof to his commanding officer, shall be punished by a court-martial with death, or otherwise, according to the nature of the offence.

The penalty of striking or drawing any weapon against a superior officer, or disobeying orders. Art. 5. Any marine officer or private man, who shall strike his superior officer, or draw, or offer to draw, or shall lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superior officer, shall suffer death, or such other punishment as shall, according to the nature of his offence, be inflicted upon him by the sentence of a court-martial.

§ 3. Desertion.

Art. 1. All marine officers and private men, who having received pay, or having been duly inlisted in the service, shall be convicted of having deserted the same, shall suffer death, or such other punishment as by a court-martial shall be inflicted.

The penalty of desertion.

Art. 2. Any non-commissioned marine officer, or private man, who shall, without leave from his commanding officer, absent himself from his company, or from any detachment with which he shall be commanded, shall, upon being convicted thereof, be punished, according to the nature of his offence, at the discretion of a court-martial.

Marines absenting from their company or detachment without leave, to be punished at the discretion of a court martial.

Art. 3. No non-commissioned marine officer or private man shall inlist himself in any other company, or in any regiment or troop of H. M.'s land forces, or enter as a seaman, without a regular discharge from the company in which he last served, on the penalty of being reputed a deserter, and suffering accordingly: And in case any officer shall knowingly receive and entertain such non-commissioned officer or private man, or shall not, after his being discovered to be a deserter, immediately confine him, and give notice thereof to the company in which he last served, he the said officer so offending shall by a court-martial be cashiered.

Penalty of inlisting in other regiments, &c. without a discharge from the former company.

Penalty on officers entertaining and not confining such as deserters.

Art. 4. Whatsoever marine officer or private man shall be convicted of having advised or persuaded any other officer or soldier to desert H. M.'s service, shall suffer such punishment as shall be inflicted upon him by the sentence of a court-martial.

The penalty of persuading any one to desert.

Oath.

I SWEAR to be true to our sovereign lord king George, *his heirs and successors, and to serve him and them honestly and faithfully in defence of his person, crown, and dignity, against all his enemies or opposers whatsoever: And to observe and obey his majesty's orders and the orders of the officers set over me by his majesty.*

The oath of fidelity.

Notice of a *deserter* being apprehended is to be sent to the secretary of the admiralty, and to the commandant of the division to which the deserter shall belong.

Notice of deserters.

By stat. 5 G. 4. *c.* 14. § 53. The keeper of every prison to which any deserter shall be conveyed, shall receive such subsistence money for his maintenance as shall be directed by the lords commissioners of the admiralty, but shall not be intitled to any fee or reward on account of his imprisonment.

5 G. 4. c. 14. Subsistence money to be paid to gaoler.

The *billeting* and *carriages* are to be in pursuance of orders from the admiralty.

Billeting and carriages.

By § 61. Any inspecting field officer stationed on the recruiting service, or any officer of the rank of captain, or of superior rank, or any adjutant of local militia within the district; or in case there be no such officer as aforesaid within a convenient distance, then any justice of the peace may, and is hereby authorized to grant, in writing under his hand, an extension of furlough to any non-commissioned officer or marine applying for the same, on account of sickness, or other casualty, which shall, on due inquiry, appear to render such extension necessary; and the officer or justice shall immediately certify the same, with the cause of its

Extension of furlough to non-commissioned officer or marine, to be certified

5 G. 4. c. 14.

to secretary of admiralty.

being so granted, to the secretary of the admiralty, and the commandant of the division to which the said marine may belong; and such non-commissioned officer or marine, during the period to which his furlough shall have been so extended as aforesaid, shall not be liable to be apprehended, or otherwise molested on the ground of his having deserted, or of criminally absenting himself from his division: Provided always, that nothing in this act contained shall be construed to exempt any non-commissioned officer or marine, whose furlough shall have been so extended as aforesaid, from being proceeded against and punished according to the provisions of this act, should it thereafter appear that such non-commissioned officer or marine had obtained the extension of his furlough by false representation made to such officer or justice of the peace as aforesaid; or in applying for and obtaining the same, had committed any offence to the prejudice of good order and military discipline: provided also, that no such furlough shall be extended by any justice of the peace for any longer period than one month, unless with the approbation of the general officer commanding the district, where such marine shall be.

Order to be made for pay due for the period of extended furlough.

§ 62. In all cases in which any extension of furlough shall be granted, and on the request of any such non-commissioned officer or marine to whom the same shall be granted, it shall be lawful for the justice of the peace granting the same, or where the same shall be granted by any officer, for any justice of the peace, upon the production of a certificate in writing from such officer, to make an order in writing, in the form (D) under his hand, upon the churchwardens and overseers of the poor of the parish, or place wherein such non-commissioned officer or marine shall reside, requiring them to pay to him any sum of money directed in such order, not exceeding two-thirds of his daily pay; such justice of the peace taking particular care to state upon the furlough, in words, the amount so directed by him to be paid, and the periods from and to which the same has been ordered to be issued, both inclusive, corroborating the statement of his signature, and further specifying upon the order to the parish officer, the date of the furlough originally granted, and the name of the commanding officer by whom signed; and the same shall be paid by such parish officer out of any money in his hands applicable to the relief of the poor; who shall be repaid by the collector of excise of the district: Provided that if any justice shall not think fit to make such order for paying any such money as aforesaid, he shall state his reasons for such refusal, in writing, at the back of the furlough.

§ 63. H. M. may make further regulations for the advancing of any such sums of money, in all cases of extension of furlough, and for the reimbursement thereof, as may be necessary for the carrying the same into effect.

16. Relief from the Penalties of the Vagrant Acts.

43 G. 3. c. 61. Every soldier, &c. on carrying his discharge within three days to the nearest magistrate, shall re-

The stat. 43 *G.* 3. *c.* 61. provides, that every soldier or marine duly discharged out of any regiment, and every sailor duly discharged out of any ship or vessel belonging to the royal navy, carrying his discharge by the third day at latest from the date thereof to the mayor or chief magistrate of the city, town, port, or corporate place nearest to or within fifteen miles from the place where he shall have received his discharge, shall receive from

such mayor or chief magistrate a certificate stating the place to which the person so discharged is desirous of going, being his home or place of legal settlement, together with the time to be fixed, not exceeding ten days for every one hundred miles, and so in proportion, except for a reasonable cause to be expressed in such certificate; and such person producing such discharge and certificate when lawfully demanded, and being in his route accordingly both as to time and road, shall not by reason of asking relief be deemed a rogue or vagabond, provided such discharge bear the true date both as to the time when and the place where it was given, and shall express the sum or sums, if any, which were paid to such soldier or sailor at such time and place.

43 G. 3. c. 61. — ceive a certificate of his place of settlement, on producing which, being in his route, he shall not be deemed a vagabond for asking relief.

§ 2. The wife of any non-commissioned officer or soldier ordered for foreign service making due proof of her not being permitted to embark with her husband before such mayor or chief magistrate as aforesaid nearest to or within fifteen miles from the place at which the regiment to which the said non-commissioned officer or soldier belongs is ordered to embark, or of any other city, town, port, or corporate place at which the said regiment shall happen to be on its march under orders for embarkation, shall receive from such mayor or chief magistrate a like certificate under his hand and the corporate seal of such city, town, port or place, and such person having and producing such certificate when lawfully demanded, and being in her route accordingly both as to time and road, shall not by reason of asking relief be deemed a rogue or vagabond within the meaning of the vagrant acts.

Soldiers' wives not permitted to embark with their husbands, shall receive a like certificate of their place of settlement, which will entitle them to ask relief while in their route, &c.

§ 3. And in case of accident or sickness duly proved, which shall prevent the person having such certificate from proceeding on his or her journey, according to the terms prescribed therein, it shall be lawful for the chief magistrate of any other city, town, port, or corporate place where such person shall be or shall arrive, to grant a new certificate, stating therein the true reasons for granting the same, and containing the like provisions as are herein-before described, and annex the same to the former certificate.

New certificates to be affixed to the former in case of delay from accident or sickness.

§ 4. All certificates or passes, granted as heretofore from the office of admiralty or war office to discharged sailors, soldiers, or marines, or to the families of sailors, soldiers, or marines serving abroad, or lately deceased, to carry them to their respective homes, shall have the same effect and force as the certificates herein permitted to be given by the magistrate as aforesaid; and the terms of the same may be extended in each instance which shall appear to require it by a new certificate from another magistrate in manner hereinbefore mentioned.

Certificate from the admiralty or war office to discharged men, &c. shall have the same effect as heretofore.

By stat. 58 *G.* 3. *c.* 92. (which repeals stat. 51 *G.* 3. *c.* 106., stat. 52 *G.* 3. *c.* 120. & *c.* 27. except as to all cases of any offences committed, or frauds practised against the same, and as to the prosecutions for any such offences or frauds, and also as to the paying, reimbursing, or accounting for any money under the provisions thereof), § 2. the secretary at war is empowered to issue passes to be filled up by any justices, for granting allowances to enable the wives, widows, and children of soldiers desirous of returning to their own homes, in certain cases specified in this act, and in any other cases in which the secretary at war shall think, under the special circumstances, that it is expedient to give such allow-

58 G. 3. c. 92. The secretary at war may issue passes to be filled up by magistrates.

8 G. 3. c. 92. ances, and to make such regulations in relation to the issuing and filling up such passes, and the certificates and vouchers upon which the same are to be issued, as the secretary at war shall think fit.

Upon regiments being ordered on foreign service, how women are to be disposed of.

§ 3. The commanding officer of every regiment or detachment about to embark for foreign service, or in which any soldiers shall die on service, leaving any widows or children destitute of the means of returning to their respective homes, shall cause a return to be made out of the wives, widows, and children of the soldiers belonging thereto, who are desirous of returning to their homes, and are unable to do so without the assistance of the allowances authorised by this act; stating in such return the several places of residence to which they are desirous of proceeding, and shall give to every such wife or widow a duplicate of such part of such return as shall apply to her and her children, certifying thereon that she is the widow, wife, or reputed wife, and the children of a soldier in his regiment or detachment, and distinctly stating in the body of such duplicate certificate, that no allowance whatever is to be made thereupon, but that it is only given for the purpose of identifying such wife, widow, or children before the justice, and of enabling him to fill up such pass as shall be allowed by the secretary at war.

Duplicate passes to be taken to justices to be filled up and signed.

§ 4. Each wife or widow to whom such duplicate shall have been delivered, shall forthwith take it to some neighbouring justice, who shall fill up and sign such an engraved copper-plate form of pass bearing H. M.'s arms and signed by the secretary at war, or by an officer in his department, and sealed with his official seal, as shall have been transmitted to such justice by the secretary at war, or as shall be so transmitted upon the application of such justice, who is to fill up the blanks in such pass, and certify the same, and make out a route in the proper column for such wife, widow, and children (if any), specifying the place to which she is going and her route, and to deliver such pass to her in exchange for the duplicate certificate of the commanding officer, in order that she may receive the allowance authorised by this act, not exceeding *per* mile one penny halfpenny for herself, and one penny for each child.

Overseer, upon production of the pass, to pay soldiers' wives an allowance at so much per mile to the next place.

§ 5. Upon production of such pass to any overseer of the poor of any place through which such woman shall proceed according to the route specified in such pass, he shall, out of any money in his hands applicable to the relief of the poor, pay her an allowance not exceeding the rate *per* mile specified in such pass as aforesaid, for the number of miles to the next city, town, or place to which she may be going, not exceeding eighteen miles, and he shall indorse on such pass the money so paid, and take a receipt from the woman signed with her hand or with her mark, specifying the regiment or detachment to which her husband belongs, or if a widow, did belong, so as that the description on the receipt may correspond with the description in the pass so produced to him as aforesaid.

Overseers to be repaid by collector of excise.

§ 6. The sum so advanced by such overseer shall upon production and delivery of such receipt to the collector of excise of the district within which such overseer acts as such, or any person officiating for such collector, be repaid by him to such overseer for the use of the fund for the relief of the poor; and such over-

seer shall give a receipt for the money so paid, which, with the receipt of the woman, shall be taken as cash in the payment of duties of excise received by such collector. 8 G.3. c. 92.

In case of sickness, women entitled to allowance.

§ 8. If by reason of any sickness or accident any such women or children shall have been left at any place of embarkation or at the last quarters of any regiment or detachment, or at any place on the march therefrom to the place of embarkation, and have been omitted in any such return, the officer commanding where such women or children shall have been so left is authorised to make out the return prescribed by this act of such women and children, and to transmit it to the war office, and to give to every such woman such duplicate as aforesaid; and also to transmit any such further return as may be necessary under any special circumstances of the case to the secretary of war, which return and duplicate are to have the same force as if done in the manner and by the person specified in this act.

Pass to be delivered up to overseer at the last place.

By § 9. Every such woman shall at the last place of her receiving any allowance under this act, antecedent to her arrival at her home, or port or place of embarkation, deliver up such pass to the overseer of the poor advancing such allowance, who shall deliver the same to the collector of excise, to be by him transmitted to the war office.

In case of being detained by contrary winds &c. proper allowances to be made.

§ 10. If by contrary winds or want of a vessel ready for sailing, or by the sickness of herself or any of her children, or by any other reasonable cause any such woman shall be detained more than one night at any port or place of embarkation, or at any place on her journey, from the signing of the pass to her arrival at such port or at her home, she may apply to any justice who is required thereupon to examine into the facts of the case, and if satisfied of the truth thereof to give her an order to receive from the overseer of the poor, if on her journey, and if at her port or place of embarkation, then from the district paymaster the sum of 1*s*. a day for the maintenance of herself, and 6*d*. a day for each child, for whom an allowance is specified in the pass; and such payment is to be made to her so long as she shall be unavoidably detained and no longer; and such order with the receipt of such woman, and the certificate of some justice of such detention, and the period thereof, shall be a sufficient voucher for every such payment, which shall be allowed and finally discharged in manner aforesaid.

5 G. 4. c. 13. Soldiers entitled to discharge, to be sent home free of expence, and have conduct and marching money home.

By stat. 5 *G*.4. *c*.13. § 115. Every soldier entitled to his discharge shall, if then serving abroad, be sent to *G. B.* or *Ireland* free of expence, and be entitled on his return to marching money from the place of his being landed to the parish or place in which he shall have been originally inlisted, at the rate *per diem* fixed for victualling soldiers on the march, reckoning ten miles for each day's march; and every soldier so entitled to his discharge, who shall be discharged at any place in the U. K., other than that in which he shall have been attested, shall be entitled to the like marching money from the place of his discharge to the place of his attestation as aforesaid.

17. Of Imprisonment, and of the demeanor of Gaolers.

5 G. 4. c. 13. General or other courts-martial may sentence non-commissioned officers or soldiers to imprisonment in any house of correction or gaol.

By stat. 5 *G*. 4. *c*. 13. §25. It shall be lawful for any general or other court-martial, to sentence any non-commissioned officer or soldier to imprisonment, with or without hard labour, as the court shall think fit, in any house of correction, common gaol, or public prison, or in any other place which such court may appoint for that purpose; and all gaolers and keepers of such houses of correction or prisons shall receive into their custody, and keep in confinement for such time as they shall be respectively required so to do, or until discharged, any such con-commissioned officer or soldier, according to his sentence, upon receiving an order in writing from the commanding officer of the district within which such general court-martial shall have been held, or from the commanding officer of any regiment or corps to which such non-commissioned officer or soldier so tried by any regimental court-martial as aforesaid shall belong: and every such gaoler or keeper shall, upon receiving an order, in writing, from any such commanding officer as aforesaid, deliver any such non-commissioned officer or soldier to any person, on producing such order, although the period for which he was originally sent to such gaol or house of correction shall not have expired: and every gaoler and keeper who shall refuse to receive and to confine any such non-commissioned officer or soldier in manner as aforesaid, shall forfeit for every such offence the sum of 100*l*., to be recovered by action of debt or information for the use of H. M.

Penalty on gaolers refusing to receive them.

Such non-commissioned officers and soldiers to forfeit their pay. Allowance to gaolers, &c.

§ 26. Every non-commissioned officer or soldier sentenced to imprisonment by any general or other court-martial shall forfeit all right to any pay from the day of his commitment during the the time of such imprisonment; and also, during the continuance of any imprisonment in any gaol or house of correction, the gaoler or keeper thereof, shall receive and apply in the maintenance of such non-commissioned officer or soldier, the sum of 6*d*. *per diem* out of his subsistence during the time that he shall continue in custody, which sum the secretary at war shall cause to be paid to the said gaoler or keeper respectively as aforesaid, upon receiving an application, in writing, signed by any justice of the peace for the county in which such prison shall be locally situate, together with a copy of the order under which the said non-commissioned officer or soldier was confined: Provided, that it shall be lawful for the secretary at war, if he think fit, to order the issue and payment of any arrears of pay, or of the surplus of such pay, or any portion thereof, or of any arrears thereof, to or on account of such non-commissioned officer or soldier, during or after the expiration of the period of his imprisonment.

Gaoler to give notice to the secretary at war before the discharge of any soldier.

§ 110. Every gaoler to whom any notice shall have been given, that any person in his custody for any offence is a soldier liable to serve H. M. on the expiration of his imprisonment, shall give one month's notice to the secretary at war, before the day on which the imprisonment of such person will expire, according to his commitment or sentence, of the period of expiration of such imprisonment.

§ 158. In case any person shall be convicted of any offences by which they shall become liable to any of the pecuniary penalties under this act, the following shall be the form of conviction. 5 G. 4. c. 13.

Form of conviction.

County of ——— } *BE it remembered, that on the —— day of ———, in the year of our Lord —— at ——— in the county aforesaid,* A. B. *came before me* (or, *us*) *one* (or, *two*) *of his majesty's justices of the peace in and for the said county, and informed me* (or, *us*) *upon oath, that* G. H. *of* ———, *on the* —— *day of* ——— *now last past, at* ——— *in the said county, did* [here set forth the fact in the manner described in the statute]; *whereupon the said* G. H. *after being duly summoned to answer the said charge, appeared before me,* (or, *us*) *the said justice* (or *justices*), *on the* ——— *day of* ———, *at* ——— *in the said county, and having heard the charge contained in the said information, declared that he was not guilty of the said offence; but the same being fully proved upon the oath of* I.K., *a credible witness, it manifestly appears to me* (or, *us*) *the said justice* (or, *justices*), *that he the said* G. H. *is guilty of the said offence charged upon him in the said information. It is therefore considered and adjudged by me* (or, *us*) *the said justice* (or, *justices,*) *that he the said* G. *H. be convicted; and I* (or, *we*) *do hereby convict him of the offence aforesaid; and I* (or, *we*) *do hereby declare and adjudge that the said* G. H. *hath forfeited the sum of* ——— *for the offence aforesaid, to be distributed as the law directs, according to the statute in that case made and provided. Given, &c.*

There are many other provisions in the mutiny act, which, not relating to justices of peace, are here omitted.

Schedule (A.)

Form of Oath.

I ——— *do make oath, that I am, or have been,* (as the case may be), (state occupation if any, or state if none) *and to the best of my knowledge and belief was born in* (state county, parish, place, &c.) *and that I am of the age of* ——— *years, that I do not belong to the militia or to any other regiment, or to his majesty's navy or marines, and that I will serve his majesty, his heirs and successors, for the period of* ——— (This blank to be filled up by the magistrate with seven years for infantry, ten years for cavalry, and twelve years for the artillery, if the person inlisting is of the age of eighteen years or upwards; but if under eighteen years, then the difference between his age and eighteen to be added to such seven, ten, or twelve years, as the case may be) *years, provided his majesty should for so long require my service; and also for such further term, not exceeding six months, as shall be directed by the commanding officer on any foreign station, and not exceeding three years, as shall be directed by any proclamation of his majesty: provided always, that in the latter case, the said additional period shall determine whenever six months of continued peace, to be reckoned from the ratification of any definitive treaty, shall have elapsed*

subsequent to the expiration of the said seven, ten, or twelve, (as the case may be) *years.*

Schedule (B.)

Form of Oath.

I ——— *do make oath, that I am, or have been,* (as the case may be) (state occupation if any, or state if of none) *and to the best of my knowledge and belief was bron in* (state county, parish, place, &c.) *and that I am of the age of* —— *years; that I do not belong to the militia or any other regiment, or to his majesty's navy or marines; and that I will serve his majesty, his heirs and successors, until I shall be legally discharged.*

Schedule (C.)

Form of Justice's Certificate.

I ———, *one of his majesty's justices of the peace of* ———, (*or chief magistrate of* ———) *do hereby certify, that* ———, *appearing to be* ——— *years old,* ——— *feet* ——— *inches high,* ——— *complexion,* ——— *eyes,* ——— *hair, came before me at* ——— *on the* ——— *day of* ———, *one thousand eight hundred and* ———, *and stated himself to be of the age of* ——— *years, and that he had no rupture, and was not troubled with fits, and was no ways disabled by lameness, deafness, or otherwise, but had the perfect use of his limbs and hearing, and was not an apprentice; and acknowledged that he had voluntarily inlisted himself for the bounty of* ——— *to serve his majesty king* George *the fourth, his heirs and successors, in the* ——— *regiment of* ———, *commanded by* ———, *and did engage to serve for the period of* ——— (this blank to be filled up by the magistrate with seven years for infantry, ten years for cavalry, and twelve years for the artillery, if the person inlisting is of the age of eighteen years or upwards; but if under eighteen years, then the difference between his age and eighteen to be added to such seven, ten, or twelve years, as the case may be) *years, provided his majesty should for so long require his service; and also for such further period as his majesty shall please to direct, not to exceed in any case three years, and to determine whenever six months shall have elapsed of continued peace subsequent to the expiration of the term of* (*seven, or ten, or twelve*) *years. And I do hereby certify, that in my presence the* 3d *and* 4th *articles of the* 2d *section, and the* 1st *article of the* 6th *section of the articles of war against mutiny and desertion were read over to him, and that he took the oath of fidelity mentioned in the said articles of war, and also the oath above set forth, and that he received the sum of* ——— *on being attested; and that I have given to the said* ——— *a duplicate of this certificate, signed with my name.*

Schedule (D.)

Form of Justice's Certificate.

I —— one of his majesty's justices of the peace of —— (or chief magistrate of ——), do hereby certify, that —— appearing to be —— years old, —— feet —— inches high, —— complexion, —— eyes, —— hair, came before me at ——, on the —— day of —— one thousand eight hundred and ——, and stated himself to be of the age of —— years, and that he had no rupture, and was not troubled with fits, and was no ways disabled by lameness, deafness, or otherwise, but had the perfect use of his limbs and hearing, and was not an apprentice, and acknowledged that he had voluntarily enlisted himself for the bounty of —— to serve his majesty king George *the fourth, his heirs and successors, in the —— regiment of ——, commanded by —— until he should be legally discharged: And I do hereby certify, that in my presence the* 3d *and* 4th *articles of the* 2d *section, and the* 1st *article of the* 6th *section of the articles of war against mutiny and desertion, were read over to him, and that he took the oath of fidelity mentioned in the said articles of war, and also the oath to the effect above set forth, and that he received the sum of —— on being attested, and that I have given to the said —— a duplicate of this certificate, signed with my name.*

Schedule (E.)

Oath of Allegiance, stat. 39 *G.* 3. *c.* 109.

I —— being enlisted to serve, either in his majesty's troops, or in the forces of the East India *company, according as his majesty shall think fit, do swear, that I will bear true allegiance to our sovereign lord king* George, *and that I will, as in my duty bound, defend him in his person, crown, and dignity, against all his enemies; and that so long as I shall remain in his majesty's service, I will duly observe and obey his majesty's orders and the orders of the generals and officers set over me by his majesty; and that if his majesty shall please to appoint me to serve in the forces of the united company of merchants of* England *trading to the* East Indies, *then I swear that I will also be true to the said united company, and will duly observe and obey all their orders and the orders of their generals and officers who shall be lawfully set over me.*

Schedule (F.)

—— } to wit. } *I —— one of his majesty's justices of the peace of ——, certify, that ——, aged —— years, —— feet —— inches high, —— complexion, —— eyes, —— hair, came before me at —— on the —— day of —— one thousand eight hundred and ——, and acknowledged that he had voluntarily inlisted himself for the bounty of ——, to serve either in his majesty's army, or in the forces of the* East India *company, according as his majesty shall think fit*

to order. And I further certify, that in my presence, the 3d *and* 4th *articles of the* 2d *section, and the* 1st *article of the* 6th *section of the articles of war, against mutiny and desertion, were read over to him; that he took the oath of allegiance prescribed by the act of* 39 George 3. *c.* 109. *to be taken instead of the oath of fidelity mentioned in the said articles of war, and also the oath above set forth; and that he ——— received the sum of ——— on being attested.*

Schedule (G.)

I ——— being inlisted to serve in the [*infantry* or *artillery*, as the case may be] *of the* East India *company, do swear, that I will bear true allegiance to our sovereign lord king* George, *and that I will, as in duty bound, defend him in his person, crown, and dignity, against all his enemies; and I swear that I will also be true to the said united company, and will duly observe and obey all their orders, and the orders of their generals and officers who shall be lawfully set over me.*

Schedule (H.)

I ——— do make oath, that I am (or *have been*, as the case may be) [state occupation, if any, or state if of none], *and to the best of my knowledge and belief, was born in* [state county, parish, or place, &c.] *and that I am of the age of ——— years, and that I do not belong to the militia, or to any regiment in his majesty's service, or to his majesty's navy or marines, and that I will serve the united company of merchants of* England *trading to the* East Indies, *until I shall be duly and legally discharged,* [or if the recruit inlists for limited service, then leave out the words scored under, and insert *for the period of twelve years* if the person inlisting is of the age of eighteen years or upwards, but if under eighteen years, then the difference between his age and eighteen to be added to such twelve years, as the case may be, and such period to be inserted instead of twelve years] *provided the said united company should so long require my service.*

Schedule (I.)

I ——— one of his majesty's justices of the peace of ——— [or, *chief magistrate of ———*] *do hereby certify, that ——— appeared to be ——— years old, ——— feet ——— inches high, ——— complexion, ——— eyes, ——— hair, came before me at ——— on the ——— day of ———, and stated himself to be of the age of ——— years, and that he had no rupture, and was not troubled with fits, and was no ways disabled by lameness, deafness, or otherwise, but had the perfect use of his limbs, and hearing, and was not an apprentice, legally bound so as to prevent his inlisting, and acknowledged that he had voluntarily inlisted himself for the bounty of ——— to serve the united company of merchants of* England *trading to the* East Indies, *and did engage to serve for the period of ———* [this blank to be filled up by the magistrate either *until discharged* or *for — years*, as in the preceding form of inlistment]. *And I do hereby certify, that in my presence the third and fourth articles of the second section and the first article of the sixth section of the articles of war, against mutiny*

and desertion, were read over to him, and he took the oath of fidelity mentioned in the act of the fiftieth year of his late majesty king George *the third, and also the oath above set forth, and that he received the sum of* ——— *on being attested, and that I have given to the said* ——— *a duplicate of this certificate, signed with my name.*

Schedule (K.)

Form of Master's Oath.

I ——— *of* ——— *do make oath, that I am by trade a* ———, *and that* ——— *was bound to serve as an apprentice to me in the said trade, by indenture, dated the* ——— *day of* ———, *for the term of* ——— *years; and that the said* ——— *did on or about the* ——— *day of* ——— *abscond and quit my service without my consent, and that, to the best of my knowledge and belief, the said* ——— *is aged about* ——— *years. Witness my hand at* ——— *the* ——— *day of* ——— *one thousand eight hundred and* ———.

Sworn before me at ——— *this* ——— *day of* ——— *one thousand eight hundred and* ———.

Schedule (L.)

Form of Justice's Certificate.

——— to wit } *I* ——— *one of his majesty's justices of the peace of* ——— *certify, that* ——— *of* ——— *came before me at* ——— *the* ——— *day of* ——— *one thousand eight hundred and* ——— *and made oath that he was by trade a* ———, *and that* ——— *was bound to serve as an apprentice to him in the said trade by indenture, dated the* ——— *day of* ——— *for the term of* ——— *years; and that the said apprentice did on or about the* ——— *day of* ———, *abscond and quit the service of the said* ——— *without his consent, and that to the best of his knowledge and belief the said apprentice is aged about* ——— *years.*

Schedule (M.)

Form of Oath.

I ——— *do hereby make oath, that I have not applied any money or stores, or supplies, under my care or distribution, to my own use, or to the private use of any other person by way of loan to such person, or otherwise, or in any manner applied them or knowingly permitted them to be applied to any other than public purposes, and according to the duty of my office.*

Sworn before me by the within named ——— *this* ——— *day of* ———.

Justice of the the peace for the county of ———
or commander in chief, or second in command, &c. the army serving in ———, *&c.* [as the case may be.]

Schedule (N.)

DESCRIPTION RETURN of ———— committed to Confinement at ————, on the ———— Day of ————, as a Deserter from the ———— Battalion of the ———— Regiment of ————.

Age.	Size.		Complexion.	Colour of		Marks.	Probable date of inlistment, and in what district.	Probable date of desertion and from whence.	Name, occupation, and address of the persons by whom apprehended.	Particulars of the evidence upon which the prisoner is committed.	Whether the prisoner confessed before the magistrate that he is a deserter.
	Feet.	Inches.		Hair.	Eyes.						

I do hereby certify, that the prisoner has been duly examined before me, as to the circumstances herein stated, and has declared in my presence that he * ———— a deserter from the before-mentioned corps.

———— Signature and address of magistrates.
———— Signature of prisoner.
———— Signature of informer.

* Enquiry having been made as to the prisoner's health, it has been reported to me that he * ———— in a fit state to be removed.

———— Signature of magistrate.

If a military medical officer be at or near the place, he will inspect the deserter, and report as to his fitness for military service.

** Insert "is" or "is not" as the case may be.

Schedule (O.)

Form of Information of a Soldier having Deserted.

——— shire } *THE information of ——— taken upon oath*
to wit. } *this ——— day of ——— one thousand eight hundred and ———, before me, one of his majesty's justices of the peace for the said county of ———, who upon his oath saith that ——— now brought before me, is a deserter from ———, and he thereupon prays that the said ——— may be dealt with according to law.*

Taken and sworn before me ———.

Form of the Commitment of a Deserter.

To the keeper of the house of correction, at ——— in the county of ———.

——— shire *RECEIVE into your custody in the said house of*
to wit. *correction ———, and there safely keep until delivered by due course of law, the body of ———, brought before me, one of his majesty's justices of the peace in and for the said county, by ——— and before me, the said justice, on the oath of ——— a credible witness, and also on his own confession, found to be a deserter from his majesty's ——— regiment of ———; and you the said keeper of the said house of correction are to receive the subsistence of the said ——— as a private soldier in the said regiment for his said maintenance while he shall be in your custody.*

Given under my hand and seal, at ——— in the said county, this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

Schedule (D.)

To the [Churchwardens or Overseers] of the [Parish, Township, or place.]

YOU are hereby required to pay to A. B. [describe whether non-commissioned officer, &c.] *within named, on furlough, from the ——— day of ——— to the ——— day of ———, signed by* [commanding officer signing the furlough] *the sum of ——— out of any money now in your hands, or out of the first money, which shall come to your hands, in respect of the rates for the relief of the poor, being at the rate of ——— per day, from the ——— day of ——— to the ——— day of ——— both inclusive, and for so doing this shall be your warrant, and pass as such, for your repayment under the marine mutiny act. Witness my hand, the ——— day of ———.*

——— *justice of the peace for* ———.

§ II. The Militia.

[1 G. 1. c. 13.—24 G. 2. c. 44.—24 G. 3. c. 6.—36 G. 3. c. 53.—42 G. 3. c. 69. c. 90.—43 G. 3. c. 10. c. 19. c. 47. c. 50. c. 100.—44 G. 3. c. 54.—46 G. 3. c. 69. c. 90. c. 91. c. 92.—51 G. 3. c. 20. c. 118.—52 G. 3. c. 38. c. 105. c. 155.—53 G. 3. c. 81. c. 132.—54 G. 3. c. 11.—55 G. 3. c. 65. c. 153. c. 168.—56 G. 3. c. 64. c. 67.—57 G. 3. c. 57.—58 G. 3. c. 92.—5 G. 4. c. 33.]

Stat. 42 *G.* 3. *c.* 90. repeals the 26 *G.* 3. and the subsequent acts relating to this force (excepting such as relate to the city of *London*, Tower Hamlets, the Stannaries, and the Cinque Ports) and the militia raised by virtue of the 26 *G.* 3. is to be subject, and all deficiencies are to be supplied, and the men so raised are to serve, according to this act.

The substance of stat. 42 *G.* 3. *c.* 90. and of the various acts since passed to amend or vary its provisions, it is endeavoured to comprise under the following heads:—

1. *Appointment of the Lieutenants, Deputy Lieutenants, Officers, and others, for Execution of the Service.*
2. *Number of Men to be raised in the respective Counties.*
3. *Supplementary Militia.*
4. *Issuing Precepts to return Lists.*
5. *Returning and amending the Lists; and Appeals to subdivision Meetings.*
6. *Proportioning the Numbers in the several Hundreds.*
7. *Ballot.*
8. *Exemptions from Service.*
9. *Swearing and Inrolling;* and herein, *Of Substitutes.*
10. *Inlisting and beating up for Volunteers.*
11. *Forming and officering of Militia Regiments.*
12. *Training and Exercise.*
13. *Arms and Accoutrements.*
14. *Clothing, Pay, Allowances, Privileges, and Exemptions.*
15. *Drawn out into actual Service.*
16. *Relief of Militia Men's Families.*
17. *Courts Martial.*
18. *Proceedings where the Militia shall not be raised annually.*
19. *Recovery and application of Penalties.*
20. *Particular Jurisdictions.*

[See Annual Training, and Local Militia, post.]

51 G. 3. c. 118. Interchange of militias of Great Britain and Ireland.

It is thought necessary to observe, in this place, that stat. 51 *G.* 3. *c.* 118. first authorised the interchange of the militias of *G. B.* and *Ireland*; that by § 7. of that act all commissioned officers of the said militias, whose services should be extended under that act, who should be disabled in actual service, should be entitled to half-pay; non-commissioned officers, drummers, and private men, to *Chelsea* Hospital; and widows of commissioned officers killed in service, to receive pensions for life, as in the regulars.

§ 8. The longest period for the *British* militia serving in *Ireland* to be for two years successively; one-fourth only of that force to be there at one time, excepting in cases of invasion or rebellion.

§ 9. The liability where there has been a performance of the period of service, to serve again, in *Ireland*, to recur only once in six years, except as in the last section.

1. Appointment of the Lieutenants, Deputy Lieutenants, Officers and others, for Execution of the Service.

By stat. 42 *G.* 3. *c.*90. § 2. & 5. The king shall appoint lieutenants for the several counties, ridings, and places, with full power to call together, arm, array, and cause to be trained and exercised, such persons, and in manner as hereinafter directed, once in every year; and such lieutenants shall from time to time appoint twenty or more such persons as they shall think fit, if so many can be found, if not, as many as can be found, being qualified as hereinafter is directed, and living within their respective counties, ridings, and places, to be their *deputy lieutenants* (the names of such persons having been first presented to and approved by H. M.), and shall also appoint a proper number of *colonels*, *lieutenant colonels*, *majors*, and other officers, qualified as hereinafter directed, to train, discipline, and command the persons to be so armed and arrayed, according to the rules hereinafter mentioned; and shall certify to H. M. the names and ranks of all such officers so to be appointed; and if H. M. shall, within fourteen days after such certificate shall have been laid before him, signify his disapprobation of any of such persons, it shall not be lawful for the said lieutenants to grant a commission to any person so disapproved, but commissions shall be granted to all such who shall not be so disapproved; and the officers so appointed for the militia, shall rank with the officers of H. M.'s regular forces, as youngest of their rank.

Appointment of the lieutenants, deputy lieutenants, and officers.

Rank of officers.

§ 3. When the lieutenant shall be out of the kingdom of *G. B.*, or there shall be none, the king may authorise any three deputy lieutenants to grant commissions on any vacancy that shall then happen; and to do all other things, which might have been done by the said lieutenant.

Lieutenant being absent, or lieutenancy vacant.

By stat. 46 *G.* 3. *c.*90. § 45. It shall be lawful for any lord-lieutenant with the approbation of H. M., to appoint any deputy lieutenant to act for him within the county as lieutenant thereof during the necessary and unavoidable absence, sickness, or other disability of such lord-lieutenant and no longer, and to appoint any deputy lieutenant to act as lieutenant of any division of such county. And by stat. 55 *G.* 3. *c.*65. § 9. in case of the illness or absence from any county, of the lieutenant thereof, it shall be lawful for the vice-lieutenant, being authorised for that purpose by the lieutenant, to grant commissions to officers to serve in the militia of such county upon any vacancy which shall then happen, in like manner as the lieutenant thereof, and to do all acts which may be lawfully done by the lieutenant.

46 G. 3. c. 90. Vice-lieutenant.

55 G. 3. c. 65.

§ 4. And no commission of any deputy lieutenant, nor any commission of any officer in the militia, granted by any lieutenant or deputy lieutenant, shall be vacated by the revocation, expiration, or discontinuance of the commission by which the latter were appointed.

42 G. 3. c. 90. Commissions not to be vacated by the revocation of the power of the grantor.

§ 6. Every person so to be appointed a *deputy lieutenant* or officer (except for *Cumberland* and the other counties and places as hereinafter mentioned) shall be seised or possessed either in law or equity, for his own use and benefit, in possession, of a free-

General qualification of a deputy lieutenant

12 G.3. c.90. hold, copyhold, or customary estate for life, or for the life of his wife, she having a freehold, copyhold, or customary estate for her life or for some greater estate, or of an estate for some long term of years, determinable on one or more life or lives, in manors, messuages, lands, tenements, or hereditaments, in *England*, *Wales*, or the town of *Berwick upon Tweed*, of the yearly value of 200*l.*, or shall be heir apparent of some person in like manner possessed of the yearly value of 400*l.*; a *colonel* to the yearly value of 1000*l.*, or heir apparent to the yearly value of 2000*l.*; a *lieutenant-colonel* to the yearly value of 600*l*, or heir apparent to the yearly value of 1200*l.*; a *major*, to the yearly value of 400*l*, or heir apparent to the yearly value of 800*l*; a *captain*, to the yearly value of 200*l.*, or heir apparent to the yearly value of 400*l.*, or he shall be a younger son of some person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 600*l.*; a *lieutenant*, to the yearly value of 50*l.*, or personal estate alone to the amount of 1000*l.*, or real and personal estate together of the value of 2000*l.*, or he shall be son of some person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 100*l.*, or of a personal estate alone to the amount of 2000*l.*, or real and personal estate together to the value of 3000*l.*; an *ensign* to the yearly value of 20*l.*, or a personal estate alone to the amount of 500*l*, or real and personal estate together of the value of 1000*l.*, or he shall be son of some person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 50*l.*, or who shall be, or at the time of his death was, possessed of a personal estate alone to the amount of 1000*l.*, or of real and personal estate together of the value of 1500*l.*; one moiety of which said estates, excepting of lieutenants and ensigns, shall be situate within the respective counties, ridings, or places in which they shall be appointed to serve.

Colonel. L. Colonel Major. Captain. Lieutenant. Ensign.

Qualifications in the smaller counties.

§ 7. In the counties of *Cumberland*, *Huntingdon*, *Monmouth*, *Westmoreland*, and *Rutland*, and in every county and place in *Wales*, the qualifications shall be as follow, and of the like estates as before mentioned:—

A *deputy lieutenant*'s shall be of the yearly value of 150*l.*, or he shall be heir apparent to an estate of the yearly value of 300*l.*; a *colonel*'s of the yearly value of 600*l.*, or he shall be heir apparent to the yearly value of 1200*l.*; a *lieutenant-colonel*'s or *major-commandant*'s shall be of the yearly value of 400*l.*, or he shall be heir apparent to the yearly value of 800*l.*; a *major*'s shall be of the yearly value of 200*l.*, or he shall be heir apparent to the yearly value of 400*l.*; a *captain*'s shall be of the yearly value of 150*l.*, or he shall be son of a person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 300*l.*; a *lieutenant*'s shall be of the yearly value of 30*l.*, or a personal estate alone to the amount of 600*l.*, or real and personal together of the value of 1200*l.*, or he shall be the son of a person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 60*l.*, or a personal estate alone to the amount of 1200*l.*, or a real and personal estate together of the value of 2400*l.*; an *ensign*'s of the yearly value of 20*l.*, or a personal estate alone to the amount of 300*l.*, or real and personal together of the value of 600*l.*, or he shall be the son of a person who shall be, or at the time of his death was, possessed of a like

estate of the yearly value of 30*l.*, or of personal estate alone to the amount of 600*l.*, or real and personal together of the value of 1200*l.*; of all which respective estates (except those for the qualifications of lieutenants and ensigns,) one moiety shall be within the respective counties or places in which such officers shall be respectively appointed to serve. 42 G. 3. c. 90.

In the isle of Ely.

§ 8. In the isle of *Ely*, a *deputy-lieutenant's* shall be of the yearly value of 150*l.*, or he shall be heir apparent to the yearly value of 300*l.*; a *captain's* shall be of the yearly value of 100*l.*, or he shall be heir apparent to the yearly value of 200*l.*, or he shall be a younger son of some person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 300*l.*; a *lieutenant's* shall be of the yearly value of 30*l.*, or personal estate to the amount of 600*l.*, or he shall be son of some person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 60*l.*, or personal estate to the amount of 1200*l.*; an *ensign's* shall be of the yearly value of 20*l.* or personal estate to the amount of 300*l.*, or he shall be the son of some person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 30*l.*, or personal estate to the amount of 600*l.*; one half of all which estates (except those for the qualifications of lieutenants and ensigns), shall be situate or arising within the said isle of *Ely*, or some other part of the county of *Cambridge*.

In cities or towns being counties within themselves.

§ 9. In all cities and towns which are counties within themselves, and have heretofore used to raise and train a separate militia within their respective liberties, and which are united with and made part of any county for the purposes of raising the militia only, the lieutenant thereof, or where no lieutenant, the chief magistrate shall appoint the deputy-lieutenants, and also the officers of the militia, whose number and rank shall be proportionable to the number of men which such city or town shall raise as their quota towards the militia of the county to which they are united for such purposes; and all powers and provisions made with respect to counties at large shall take place in the said cities and towns. And the qualification for a *deputy-lieutenant* shall be 150*l.* a-year as aforesaid, or a personal estate alone, or real and personal estate together to the amount or value of 3000*l.* *Field officer* 300*l.*, or personal estate alone, or real and personal together, to the value of 5000*l.* *Captain* 150*l.* a-year, or personal estate alone, or real and personal together, to the value of 2500*l.* *Lieutenant* 30*l.* a-year, or personal estate of 750*l.* *Ensign* 20*l.* a-year, or personal estate of 400*l.* One half of all which real estates (except those for the qualification of lieutenants and ensigns,) shall be within such city or town, or within the county to which such city or town is united for the purposes aforesaid.

Of estates in reversion or remainder.

§ 10. Provided, that the immediate reversion or remainder of and in manors, messuages, lands, tenements, or hereditaments, which are leased for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, on reserved rents, and which are to the lessees of the clear yearly value of 300*l.* shall be deemed equal to an estate hereinbefore described, of the yearly value of 100*l.*, and so in proportion.

For terms of years.

§ 11. Also a person, either at law or equity, for his own use and benefit, in possession of an estate for a term originally granted for twenty years or more, of an annual value (over and above all

42 G.3. c.90.

rents and charges payable in respect of the same) equal to the value of such an estate as is required for the qualification of a deputy-lieutenant and commissioned officer respectively, and situate as aforesaid, shall be deemed sufficiently qualified.

No commission above a lieutenancy to be granted until the qualification is delivered.

§ 12. But no person shall be appointed a *deputy lieutenant*, nor to a higher rank than that of *lieutenant*, until he shall have delivered in to the clerk of the peace, or (in his absence) his deputy, a specific description in writing, signed by himself, of his qualification, stating the parish in which the estate which forms such qualification is situate: and the clerk of the peace shall transmit to the lieutenant a copy of such description; and no commission hereafter granted for a higher rank than that of lieutenant shall be valid, unless it be declared in the commission that such officer hath so delivered in his qualification.

Qualification to be inserted in the Gazette.

§ 13. The clerk of the peace shall enter the qualifications so transmitted to him upon a roll to be kept for that purpose, and cause to be inserted in the *London Gazette* the commissions, in like manner as commissions in the army are published from the war office; and the expence of such insertion shall be paid by the treasurer of the county, and the clerk of the peace, or his deputy, shall, in *January* yearly, transmit to one of H. M.'s principal secretaries of state, a complete account of the qualifications, and every deputy-lieutenant and commissioned officer shall, at some general quarter sessions of the peace, or in one of the courts of record at *Westminster*, within six months after he shall have accepted his commission, take the oaths, and make and subscribe the declaration as directed by stat. 1 *G.* 1. *c.* 13., and also take the oaths prescribed by stat. 36. *G.*3. *c.* 53. as other persons qualifying for offices (unless he have done it before.)

Deputy-lieutenants and officers to take the oaths.

Penalty on persons acting who are unqualified.

§ 14. And every *deputy-lieutenant*, *colonel*, *lieutenant-colonel* or *majors* acting, not so qualified or not having delivered in such description as hereinbefore required, shall forfeit 200*l.*; and every *captain* 100*l.*; the proof of his qualification to lie on the party against whom the action is brought; but a peer of the realm, or his *heir apparent*, may act as deputy-lieutenant, or a commissioned officer within the county or place wherein he shall have some place of residence, although he may not have the same qualification, and need not leave his qualification with the clerk of the peace.

Exception in favour of peers.

In the case of *Robinson q. t.* v. *Garthwaite*, 9 *East*, 296. it was decided that the receipt of pay and contingent allowances by a captain of militia before the completion of his qualification, not having been provided for by stat. 42 *G.*3. *c.*90. § 14. was not an execution of any power directed by that act to be executed by captains so as to make him liable to the penalty thereby imposed, even if any other of the acts of military discipline were intended to be prohibited by the statute which was questioned.

Majors now serving qualified under former acts, may hold their commissions.

§ 15. Provided that any major now serving, who shall be possessed of the qualification required by the laws in force before the passing of this act, shall and may continue to hold such commission of major in the militia to be raised under this act.

Lieutenant-colonels or majors reduced, to hold their respective ranks in the general militia service.

§ 16. Provided also, that every lieutenant-colonel or major, duly qualified, and commissioned under any former militia acts, and now actually serving, and who in consequence of the reduction of the establishment of the regiment, battalion, or corps in which he is serving will no longer retain his commission; and

any officer in the militia duly qualified, who in consequence of the augmentation of the militia forces hereinafter provided, may be promoted to the commission of lieutenant-colonel or major, and may by any subsequent reduction of that augmentation no longer retain such commission, shall and may continue to rank respectively in the general militia service according to the date of his commission or appointment in the militia so vacated as aforesaid; provided that nothing herein contained shall extend to give any such lieutenant, colonel, or major, any regimental rank. 42 G. 3. c. 90.

§ 17. And H. M. may signify his pleasure to the lieutenant to displace all or any deputy-lieutenants and officers, and thereupon such lieutenant shall forthwith appoint others in their stead. Deputy-lieutenants or officers may be displaced.

§ 18. The lieutenant shall from time to time appoint a clerk of the general meetings to be holden as hereinafter directed; and may displace such clerk if he shall think fit, and appoint another; and the deputy-lieutenants within their respective subdivisions, or the major part of those present at any sub-division meeting, shall also from time to time appoint a clerk for their sub-divisions, and may displace him if they they think fit, and appoint another. County-lieutenants and deputies to appoint clerks of their meetings.

By stat. 53 *G.* 3. *c.* 81. § 3. It shall be lawful for the secretary at war for the time being, to require and take from all persons who shall be appointed to the situation of clerks of sub-division meetings after the passing of this act, security by bond, in such sum as to him shall seem reasonable, with two sufficient sureties for the due execution of the trusts reposed in them, and for the duly paying and accounting for, according to law, all sums of money which shall come to their hands as clerks of sub-division meetings; and no appointment of any person after the passing of this act shall be good or valid till such security shall be given; and every person so appointed as aforesaid, and acting as a clerk of sub-division meetings, without having first given such security as aforesaid, shall forfeit, for any time he shall so act before, having given such security, the sum of 100*l.* together with the amount of all money which shall have been paid to him as such clerk of sub-division meetings as aforesaid. 53 G. 3. c. 81. Secretary at war to require clerks of sub-divisions hereafter appointed to give security.

And by stat. 42 *G.* 3. *c.* 90. § 67. in all cases, in the execution of this act, when any matter or thing is directed to be enquired of or examined upon oath, before any lieutenant, deputy-lieutenant, or justice, he and they are hereby authorised to administer such oath; and all other oaths to be taken in pursuance of this act shall be administered by any lieutenant or deputy-lieutenant. 42 G. 3. c. 90. Lieutenants, deputies, and justices authorised to administer oaths.

§ 171. And the provisions of stat. 24 *G.* 2. *c.* 44. for rendering justices more safe in the execution of their office, shall extend to all lieutenants and deputy-lieutenants acting in the execution of this or any other act relating to the militia, in like manner as the same extend to justices in the execution of their office. Indemnity of lieutenants and deputy-lieutenants.

2. *Number of Men to be raised in the respective Counties.*

By § 19. the number of private men to be raised shall be as follows: Number of private men.

For the county of *Bedford* - - - - - -	317*
Berks - - - - - - - -	561

42 G.3. c. 90.

Bucks	599
Cambridge	481
Chester, with the city and county of the city of *Chester*	885
Cornwall	647
Cumberland	615
Derby	939
Devon, with the city and county of the city of *Exeter*	1512
Dorset, with the town and county of the town of *Poole*	411
Durham	492
Essex	1244
Gloucester, with the city and county of the city of *Gloucester* and the city and county of the city of *Bristol*	1163
Hereford	520
Hertford	480
Huntingdon	159
Kent, with the city and county of the city of *Canterbury*	1296
Lancaster	2439
Leicester	643
Lincoln, with the city and county of the city of *Lincoln*	1368
Middlesex (exclusive of the Tower hamlets)	3038
Monmouth	280
Norfolk, with the city and county of the city of *Norwich*	1209
Northampton	724
Northumberland, with the town and county of the town of *Newcastle-upon-Tyne*, and town of *Berwick-upon-Tweed*	649
Nottingham, with the town and county of the town of *Nottingham*	564
Oxford	603
Rutland	83
Salop	991
Somerset	1556
Southampton, with the town and county of the town of *Southampton*	850
Stafford, with the city and county of the city of *Lichfield*	1133
Suffolk	1042
Surrey	1336
Sussex	803
Warwick, with the city and county of the city of *Coventry*	853
Westmorland	243
Worcester, with the city and county of the city of *Worcester*	616
Wilts	917
York, *West Riding*, with the city and county of the city of *York*	2429
—— *North Riding*	911
—— *East Riding*, with the town and county of the town of *Kingston-upon-Hull*	564
Anglesea	128
Brecknock	204
Cardigan	244
Caermarthen, with the county borough of *Caermarthen*	405
Caernarvon	128
Denbigh	344
Flint	201

Glamorgan - - - - - - - - - -	403	42 G. 3. c. 90.
Merioneth - - - - - - - - - -	121	
Montgomery - - - - - - - - - -	279	
Pembroke, with the town and county of the town of *Haverford West* - - - - - - - - -	201	
Radnor - - - - - - - - - -	140	
Total	40,963	

§ 20. And such numbers shall continue to be the respective quotas, until the 25th day of *June* 1805, and thence until other quotas shall be appointed by H. M.'s privy council in manner hereinafter directed; and the respective quotas that shall at or after the expiration of the said first mentioned period, and also from time to time at or after the expiration of every successive ten years after such period, be so appointed by the privy council, shall from the appointment thereof continue until other quotas shall be appointed.

Such numbers to continue the quotas until June 25, 1805, and thence until others shall be settled.

§ 38. The privy council shall, on or before the 25th of *June* 1805, and from time to time at the expiration of every succeeding period of ten years, take into consideration the number of men fit and liable to serve in the militia, and shall forthwith ascertain and fix the number of men who shall for the next succeeding ten years serve for each county, as near as may be by the proportion that the number of men fit and liable to serve shall bear to the whole number of men by this act directed to be raised; and shall transmit the numbers so fixed to the respective lieutenants, and cause notice of the same to be thrice printed in the *London Gazette*.

The privy council by June 25, 1805, and every ten years after, to fix the quota.

§ 39. And where the number so fixed shall be greater than the former quota, the lieutenant for such county, together with any two or more deputy-lieutenants, and on the death or removal or in the absence of the lieutenant, any three or more deputy-lieutenants shall, at a general meeting to be holden for that purpose, appoint what number of militia-men shall serve for each hundred, rape, lathe, wapentake, or other division within such county, and the additional number to make up the whole number so fixed shall be provided in the same manner as other men are by this act to be provided; and all the additional men so provided, or their substitutes, and also all volunteers, shall take the oath by this act required to be taken, and shall be enrolled, or sign their consent to serve in the militia, in such manner as is directed by this act, and in case of refusal, shall be subject to the penalties in like cases inflicted by this act: Provided that where the number so fixed shall be less than the former quota of such county or place, the lieutenants, together with any two or more deputy-lieutenants, or (on the death or removal, or in the absence of the lieutenant) any three or more deputy-lieutenants shall, at a general meeting to be held for that purpose, dimiss to their own homes, by ballot proportionally out of each hundred, so many men as shall exceed the number so fixed; and those so dismissed shall remain liable to serve in the militia, and shall join any corps serving for the county, from the militia of which they shall have been dismissed, whenever called upon so to do for the purpose of supplying vacancies that may arise in it; and the names of all so dismissed shall be entered in a list; and the de-

Where the number fixed shall be greater than the former quota, the general meeting shall appoint what number shall be chosen for each division;

and where the number shall be less, shall dismiss the excess by ballot.

Men dismissed liable to serve.

42 G. 3. c. 90.

puty-lieutenants shall cause the men necessary for supplying any vacancies that may thereafter arise, to be balloted for out of such list, and so as occasion shall require, so long as any contained in such list can be found fit to supply such vacancies; and every person so balloted who shall not be unfit by reason of sickness or bodily inability, shall serve in the militia upon the conditions and for the remainder of the time for which he shall have engaged to serve before he was so dismissed: and as soon as all persons returned in any such list that can be found fit, shall by ballot have supplied such vacancies, the men necessary for supplying future vacancies shall be raised, chosen, and balloted for in manner directed by this act.

57 G. 3. c. 57. H. M. may order quotas to be fixed before the period appointed by the 42 G. 3.

By stat. 57 *G.3. c.*57. § 2. H. M. may order and direct that the quotas of the several counties and places shall be ascertained and fixed by the privy council before the expiration of the next period fixed in stat. 42 *G.* 3. *c.* 90. for ascertaining and settling such quotas, and all such proceedings are to be had for apportioning the same and giving effect thereto as if such quotas had been fixed at any period specified in the said act.

3. Supplementary and supernumerary Militia.

42 G. 3, c. 90. In case of invasion the king may increase the militia.

By stat. 42 *G.*3. *c.*90. § 146. In case of invasion, or of imminent danger thereof, and of rebellion, the king may (the occasion being first communicated to parliament, if sitting, or declared in council and notified by proclamation, if there be no parliament sitting,) by his proclamation order and direct, in addition to the number of men required to be raised under this act, any number of men not exceeding one half of such number to be raised and enrolled.

And all the provisions of this act relative to the militia are to be applicable to the raising, training, and exercising, and for the embodying and calling out into actual service the supplementary militia.

H. M., by proclamation may disembody the supplementary militia.

§ 148. Whenever H. M. shall deem it expedient to reduce any part of the supplementary militia, he shall by proclamation declare such reduction, and if it shall be then embodied, shall disembody the same, or any number of private men equal thereto, whether such men were raised and enrolled in pursuance of any proclamation for raising the supplementary militia, or were enrolled before and serving at the time of the issuing thereof; and the private men so disembodied, or so many of them as may have been enrolled and not embodied at the time of such proclamation, shall nevertheless remain liable to serve for their respective periods of enrolment, and shall, during such periods, supply all the vacancies that may arise in the places for which they shall have been so enrolled, whenever called upon so to do; and the deputy-lieutenants shall cause any man that may be required for supplying any vacancy in the established militia, to be taken from the respective classes, or balloted as the case may require, according to the provisions of this act relating to the taking men for the militia from classes, until all so remaining liable and fit to serve shall have supplied such vacancies. Provided, that no ballot shall take place for raising any man to supply any vacancy that may arise from any parish or place so long as the same can be supplied from any men, then enrolled for such parish or place

that shall remain liable and be fit to serve, and that no man so remaining liable shall be called upon, or be liable to supply any vacancy arising for any other parish or place than that for which he shall be originally enrolled under this act; nor shall such man, so remaining liable (during such time) be capable of being inlisted into H. M.'s regular forces. 42 G. 3. c. 90.

4. Issuing Precepts to return Lists.

§ 21. *General Meetings* of the lieutenancy shall be holden in some principal town; to consist of the lieutenant, together with two deputy-lieutenants at the least, or (on the death or removal, or in the absence of the lieutenant,) of three deputy-lieutenants at the least; and one such general meeting shall be holden annually, upon the last *Tuesday* which shall happen before the tenth day of *October* in every year, or earlier if occasion shall require: and such lieutenant, together with any two deputy-lieutenants, or (on the death or removal or in the absence of the lieutenant) three deputy-lieutenants may summon other general meetings on any days to be fixed by such summons, of which days and the places of holding such meetings notice shall be given in the *London Gazette*, and also in any weekly newspaper usually circulated in the county, riding, or place, 14 days at least before the days appointed for such meetings; and the expence of all notices shall be paid by the treasurer of the county, and if any annual or other general meeting shall not be attended by the lieutenant and two deputy lieutenants, or by three deputy-lieutenants, the lieutenant, or any one deputy-lieutenant, attending, may adjourn the same to any other time and to any place within such county, and in case no deputy-lieutenant shall attend at the time and place appointed for the next meeting (*a*), then the clerk of the general meetings, or his deputy, shall adjourn such meeting to any other time, to be holden at the same place. Regulations for holding general meetings of lieutenancy.

§ 22. And meetings of the deputy-lieutenants within the subdivisions of the respective counties, shall be holden as hereinafter directed, which subdivision meetings shall consist of two deputy-lieutenants at the least: Provided that where two deputy-lieutenants do not attend, one deputy-lieutenant and one justice may do all things directed to be done by deputy-lieutenants at subdivision meetings. Subdivision meetings to be appointed.

§ 23. The respective clerks of the subdivision meetings shall, as soon as conveniently may be after any such meeting shall have been appointed, give notice in writing of the time and place of meeting to such of the deputy-lieutenants resident within such subdivision as he conveniently can, and also to the commanding officer of the corps, if on actual service, or (if not) to the colonel or other commandant, or (if he be absent from *G. B.*) to the next commanding officer, by notice addressed to the adjutant, and an account of the several days fixed for receiving lists, and for ballotting and enrolling the men; and shall, as soon as the men are enrolled, likewise transmit to the colonel or other commandant, or to the commanding officer, a list specifying the names, trades and Clerk to give notice of subdivision meeting.

(*a*) This power of adjournment is very defective.

42 G.3. c.90.

usual places of abode of all such men as are enrolled; and where there are substitutes, the names, trades, and places of abode of the persons in the room of whom they were enrolled.

Sufficient number not appearing.

§ 24. If there shall not appear at any subdivision meeting two deputy-lieutenants, or one deputy-lieutenant and one justice, the clerk of the meeting shall, by notice in writing given to all the deputy-lieutenants within such subdivision or left at their respective places of abode, appoint another meeting to be held within 14 days at the same place, such notice being given five days at the least previous to such meeting.

General meeting to appoint subdivision meetings,

§ 25. The lieutenant and deputy-lieutenants, or the deputy-lieutenants, at every annual, or at some other general meeting to be holden as aforesaid, shall appoint the first meetings of the deputy-lieutenants within the several subdivisions, which said first meetings shall be appointed to be held as early after the 10th of *October* in every year as conveniently may be, or at such other time as may be most expedient for carrying this act into execution; and they may, if needful, appoint the time and place for a second general meeting, and shall issue out their orders, (No. 1.) to the chief constables, or where there are none such to some other officer of the several hundreds, or other divisions within their respective counties, requiring them to issue an order under their hands, to all constables, or other officers of every place, within their respective hundreds, to return to the deputy-lieutenants at their first subdivision meeting, fair and true lists of the names of all the men usually and at that time dwelling within their respective parishes, between the ages of 18 and 45 years.

and orders to return lists.

Constables, &c. to give notice to housekeepers, &c. to produce lists.

§ 26. Such constables and other officers required to return such lists, shall, within 14 days (*a*), after being so required, give or leave notice in writing, [which is now to be in the form directed by stat. 46 *G*.3. *c*.91. schedule (A.)] to or for every occupier of every dwelling-house, where any person shall reside within the limits of the places for which they act, at his dwelling-house, or where such dwelling-house shall be divided into different apartments, and occupied distinctly by several persons, then to or for the occupier of each, to prepare or produce within 14 days a list in writing to the best of his belief of the christian and surname of every man resident therein between the ages of 18 and 45, distinguishing every person therein claiming to be exempt from serving, together with the ground of such claim; and every such notice shall mention the day, time, and place appointed for hearing appeals within such subdivision by persons claiming to be so exempt; and every such occupier shall after such notice make out such list, and sign and deliver the same to such constable or other officer; and if any occupier shall neglect or refuse to make out, sign and deliver such list within the said time, or omit any person who ought to have been included, or knowingly make any false return, he shall for every such offence forfeit not exceeding 5*l*.

Penalty of 5l. for not duly delivering lists, or making false returns.

Quakers to produce certificates of their being such.

§ 27. Where any notice shall be served upon any occupier being a quaker, such occupier shall within seven days after the service thereof produce to the officer a certificate under the

(*a*) See the note subjoined to Schedule A.

hands of two or more reputable housekeepers being quakers, acknowledging him to be of their persuasion; and in all such cases such constables or other officers shall make returns of the persons liable to serve in the militia resident in the houses of such quakers, in the same manner as is directed by this act in cases where returns are not made to such notices. 42 G.3. c.90

§ 28. The constables, or other officers of every place, shall, within one month after having delivered such notices, make out annually a fair and true list [by stat. 46 *G.* 3. *c.* 91. directed to be in the form marked (B)] [see p. 419. *n.* (*a*)] of the names of all the men usually and at that time dwelling within the same, between the ages of 18 and 45, as well of those who have not as of those who shall have made any return or been returned, distinguishing their respective ranks and occupations, and those who have made returns to such notices from those who have neglected (and where the true names of such persons cannot be procured, their common appellation shall be sufficient), and distinguishing which of the persons so returned labour under any infirmity likely to incapacitate them from serving, and which of them claim to be exempt from serving, and on what account, and shall affix a true copy of every such list on the door of the church or chapel, or (if any place shall have no church or chapel belonging thereto) on the door of the church or chapel of some parish or place thereto adjoining, some one *Sunday* morning three days at the least before the meeting, at which such return is to be made, and also notice in writing at the bottom of the said copy, of the day and hour and place of meeting for hearing appeals, and that all persons who shall think themselves aggrieved may then appeal, and that no appeal will be afterwards received; and shall afterwards make a return of such list, or a true copy thereof, to the deputy-lieutenants of the subdivision.

Constables, &c. to make out yearly lists. 46 G.3. c.91

§ 31. And if any person shall by gratuity, gift, or reward, or by promise thereof, or of any indemnification, or by menaces or otherwise, endeavour to prevail on any constable or other officer to make a false return, or to erase or leave out the name of any person who ought to be returned to serve, he shall forfeit 50*l*. And if any person refuse to tell the christian and surname of himself or of any man lodging or residing within his house, or shall tell a false name to any constable or other officer authorised by this act to demand the same, he shall forfeit 10*l*.

Endeavouring to procure false returns.

Persons refusing to tell their names.

§ 33. Provided, that if any chief or other constable, headborough, tythingman, or overseer shall be a Quaker (and certified to be so by two Quakers), and shall neglect or refuse to perform the duties required by this act, any two justices acting for the division, in all cases where in their judgment it shall be expedient, by their order under their hands and seals, may appoint a fit person to be deputy to such Quaker; and every such deputy shall exercise all the powers and jurisdictions given by this act to such officer for whom he shall so act, and shall perform all his duties under the like pains and forfeitures.

Two justices may appoint deputies to Quakers, being constables.

§ 34. The deputy-lieutenants at their subdivision meetings may add together, whenever they shall think it necessary, any two or more parishes or tythings, or any *parochial** place or places to any parish or parishes, tything or tythings adjoining thereto, for the purposes of this act; and may also add together the lists of

Two or more places and lists for them may be added together.

* *Extra-parochial* intended.

42 G. 3. c. 90. such parishes and places, so as to make the choice of militia men by ballot within every such subdivision as equal as possible: and where any parishes and places so added together shall lie in different hundreds, or other divisions within the same county, they shall direct in which of them the same shall be considered; and shall proceed upon such lists so added together as if they had been originally returned for one parish, or for the parish to which any extra-parochial place shall have been added; and the constables or other officers of such parishes, so added together, shall act together in the execution of this act; and shall hold their meetings in the parish which shall be named first in such order of deputy-lieutenants; and if any difference shall arise between the officers of any parish or place, or between the officers of different parishes, the deputy-lieutenants shall at any subdivision meeting hear and determine the same and make such order therein as to them shall seem meet; and such orders shall be final and conclusive.

Deputy-lieutenants to determine disagreements between parish officers.

Extent of this act.

§ 35. The provisions of this act shall extend to every extra-parochial place added to any parish as fully as if they had severally been expressly applied thereto; and where there shall be an extra-parochial place, or other place wherein no constables or overseers of the poor, have been or are appointed to act, the respective constables of the parishes to which such extra-parochial or other place shall have been added, shall act for the same.

Rates to be distinctly made for this act.

Provided, that if any rate shall be to be made for any such parishes and extra-parochial places jointly, it shall be distinctly made for the purpose of this act. And that every such separate rate shall be raised in the same manner as the poor rates.

Fraudulent apprenticeship.

§ 49. And if any two or more deputy-lieutenants at any subdivision meeting, shall receive information, or suspect that any person inserted in any list and described as an apprentice, has been fraudulently bound in order to avoid serving, they may enquire into such binding, and summon witnesses, and examine them on oath; and if such fraud shall appear, they may appoint such person so bound apprentice, to serve in the militia of the place for which such list was returned, if there be a vacancy: if not, then on the first vacancy that shall happen: and the person to whom such apprentice shall be so bound shall forfeit 10*l*.

46 G. 3. c. 91. The king may direct returns to be made according to this act.

By stat. 46 *G.* 3. *c.* 91. H. M. is empowered in case it shall appear to him to be necessary to direct the lieutenants of counties, or in their absence the vice-lieutenant, or any three deputy-lieutenants authorised to act for him by precept under his or their hand and seal, to require the high constable of such subdivision or hundred to direct by warrant or order under their hands, the several constables or other officers of every parish or place to give or leave notice within seven days after the receipt of any such order to or with all occupiers of houses and apartments, to make returns according to the provisions of the 42 *G.* 3. *c.* 90., and such constables shall within ten days after the delivery of such notices, make out lists and give notice of such lists in manner therein directed, by affixing copies of such lists in conspicuous places according to the provisions of the said act, and give notices, as therein directed, of the days, times and places for hearing appeals on such lists.

§ 2. & 3. Every such return to such notices delivered to the constables or other officers aforesaid, and every return hereafter to be made under the 42 *G*. 3. shall specify the ages of, and other particulars relating to the persons returned therein, according to the form in the schedule annexed marked (A), and when such return shall not have been made, such ages and other particulars shall be specified by the constables in their returns according to the best of their belief; and the persons so returned shall be classed by the clerks of subdivision meetings according to their several ages and other circumstances in the form and in the classes in the schedule annexed marked (B), and in like manner be classed according to the form (C) in the return to be made by the clerks of the general meeting to the privy council (*a*), provided that it shall be lawful for H. M., by any order given by one of his principal secretaries of state, to direct that the persons to be returned shall be arranged in any other classes as to age, marriage, children, or other circumstances, and to require returns to be made to the constables, and by clerks of general and subdivision meetings according to any such classes, and in such other forms as H. M. shall by such order direct.

46 G. 3. c. 91.

Returns to specify age of persons who are to be classed.

§ 4. The respective ministers, church-wardens, and overseers, and other parochial officers in every parish or place, are required to aid and assist the constables and other officers in making out the lists so to be returned.

Ministers and parochial officers to assist in making out lists.

§ 5. If any such lists shall be required under this act, the lieutenants, vice or deputy-lieutenants shall order and direct that subdivision meetings shall be appointed to be held at such times and places as they shall direct, not exceeding one month after the precepts to the high constables shall have been issued as aforesaid, for the purpose of hearing appeals thereon, and correcting such lists, and the subdivision clerks shall within seven days after such meeting make out and transmit correct abstracts of such lists to the clerk of the general meeting, who is required upon the receipt of such abstracts within seven days to make out and return correct abstracts thereof to the privy council.

Meetings for hearing appeal.

5. Returning and amending the Lists; and Appeals to Subdivision Meetings.

By stat. 42 *G*. 3. *c*. 90. § 29. If any person whose name shall be inserted in any list, shall think himself aggrieved thereby, or by the omission of any other names, or shall claim to be exempted from serving, he may appeal to the subdivision meeting appointed for hearing such appeals. And any two deputy-lieutenants shall hear and determine the same: and if the same cannot be heard on the day first appointed, they may adjourn to any other days. Their determination (if only two), or that of the major part, if more than two are assembled, shall be final; nor shall any appeal be afterwards heard

42 G. 3. c. 90.

Persons aggrieved may appeal.

(*a*) The schedules annexed to the act do not accord with the words of this clause. Schedule (A) is the form of the notice to be given to and of the return to be made by the householders to the constable; (B) by the constable to the subdivision clerk; (C) by him to the clerk of the general meetings; and (D) by the latter to the privy council.

or allowed, or any exemption claimed or admitted on behalf of any persons whatever.

43 G.3. c.50. Penalty on neglecting to appeal.

But by stat. 43 *G.*3. *c.*50. § 13. on the making out or amending of any lists of persons liable to serve, every person who shall wilfully neglect to appeal at the time appointed for that purpose, shall forfeit for every offence not exceeding 20*s.* nor less than 5*s.* at the discretion of any two or more deputy-lieutenants, or justices or magistrates; and on non-payment thereof be imprisoned at their discretion for any time not exceeding one week.

42 G.3. c.90. Constables, &c. to verify lists on oath which, after amendment, are to be returned to the clerks of general meetings.

By stat. 42 *G.*3. *c.*90. § 30. On the days and at the places so appointed for the returns of the lists, the constables or other officers shall attend and verify the said returns upon oath; and the said deputy-lieutenants, or any two or more of them, assembled in their respective subdivisions, shall, after hearing any appeals or claims of exemption, direct such lists to be amended as the case shall require, and shall also direct the names of all persons by this act exempted from serving, to be struck out, and the names of persons omitted to be inserted; and after amending the said lists, shall appoint times and places for their second meetings, and return to the clerk of the general meetings certificates under their hands [*the form of the return to be made by the subdivision clerk to the clerk of the general meetings is annexed to the* 46 *G.* 3. *c.* 91. *schedule* (C)], of the number of men in each parish or place between the ages of eighteen and forty-five years, distinguishing the number liable to serve, and also the number exempt from serving in each parish or place; and the same shall be filed for the use of the general meetings.

Deputy-lieutenants may order the attendance of constables at subdivision meetings.

§ 32. The deputy-lieutenants within any subdivision, or any two or more of them may, from time to time, issue their order under their hands and seals requiring the attendance of the constable or other officer of any parish or place within such subdivision at such time and place as in such order shall be expressed; and if he refuse or neglect to appear according to such order, or to return any such list as before directed, or to comply with such orders and directions as he shall from time to time receive from such deputy-lieutenants, or shall in making such return be guilty of any fraud or wilful partiality, or gross neglect in his duty, they, or any two of them, may commit him to the common gaol for one month, or at their discretion fine him, not exceeding 20*l.* nor less than 40*s.*

Penalty on clerks to general meetings failing to transmit to the privy-council annual returns.

§ 37. The clerks to general meetings shall transmit to the privy council annually, as soon after the returns of men shall have been made to the general meetings as the same can be done, accurate returns [a form of which is annexed to stat. 46 *G.*3. *c.*91. schedule (D)] of the number of persons between the ages of eighteen and forty-five, distinguishing the number fit and liable to serve, and also the number therein exempt from serving; and upon neglect to make such return within one month after the general meeting at which the returns of men shall have been laid before them, or wilfully making any false returns, he shall forfeit 100*l.*

List lost.

§ 46. If the list of any parish or place shall be lost or destroyed, the deputy-lieutenants, or any two of them, may cause a new list to be made and returned to them at their next subdivision meeting, in the same manner as the former was made.

§ 47. Every person chosen by ballot to serve shall be liable to such service though he may have removed from the place where his name was inserted in the list, provided he was residing in such place when the list was prepared. And every person having more than one residence shall serve for that place where his name was first inserted in such list; and the clerk of the subdivision meeting to which such list shall be returned, shall, when required, grant a certificate to that effect *gratis*, specifying the time of making and returning such list.

42 G. 3. c. 90.

Persons chosen shall serve, though they remove.

§ 48. Where any parish shall lie in two or more counties or ridings, the inhabitants thereof shall serve in the militia of the county or riding wherein the parish church is situated: and such parish shall, for all the purposes of this act, be deemed part of such county or riding.

Persons to serve in the militia of the county, in which the church is situate.

6. Proportioning the Numbers in the several Hundreds, &c. or altering the Subdivisions.

§ 40. The lieutenant, together with three deputy-lieutenants, or (on the death or removal, or in the absence of the lieutenant, (five deputy-lieutenants, may at a general meeting alter the appointed subdivisions within such county, if they shall see occasion; and may alter the established allotment of the number of men in each hundred, or other division, according to the numbers contained in such certificates received from the several subdivision meetings.

General meetings may alter subdivisions.

§ 41. At the second subdivision meeting as aforesaid the deputy-lieutenants shall appoint what number shall serve for each parish and place, in proportion to the number appointed to serve for each hundred or other division; and shall appoint another meeting within three weeks. And they shall issue out an order (No. 2.) to the chief constables, or other officers of the respective hundreds or other divisions, requiring them to give notice to the constable or other like officer of every parish or place, of the number of men appointed to serve for such place, and of the time and place of the next subdivision meeting.

Proportioning in the several parishes or places.

By stat. 44 *G.* 3. *c.* 54. § 16. The lieutenants and deputy-lieutenants of every county, when they fix at any general meeting the proportions of men to serve in the militia for the several hundreds or other divisions, shall deduct the number of yeomanry and volunteers exempted from the number of persons liable to the ballot, and apportion the quotas accordingly; and the deputy-lieutenants at their respective subdivision meetings shall in like manner apportion the quotas for the several parishes and places: provided, that when a greater number of men are actually serving for any division, parish or place than would be due from it, according to the last made apportionment, the surplus shall not be discharged, but the vacancies as they occur shall be supplied from such divisions, parishes, or places, as by the last made apportionment are most deficient.

44 G. 3. c. 54. Mode of making apportionments where there are yeomanry or volunteers.

7. Balloting.

By stat. 42 *G.* 3. *c.* 90. § 41. The deputy-lieutenants, or any two or more of them assembled in pursuance of such appointment shall cause the number appointed to serve to be chosen by ballot

42 G. 3. c. 90. Balloting.

42 G. 3. c. 90. out of the list returned for every parish as aforesaid; and shall appoint another meeting within three weeks, and issue an order (No. 3.) to the chief constable to direct the constables or other officers of each place to give notice to every man so chosen (by giving or leaving the same at his place of abode seven days previously) to appear at such meeting.

Vacancy by mistake or neglect.

§ 44. And if through the neglect or mistake of any chief constable, constable or other officer, or from any other cause, the full number of men so appointed should not be duly enrolled at the meeting for that purpose, the said deputy-lieutenants shall immediately cause the lists to be amended, and proceed to a fresh ballot, and adjourn their meeting, or appoint other meetings, and repeat the amending of the lists as may be necessary.

Discharge of person balloted being under size or not approved.

§ 53. And if it shall appear to the deputy-lieutenants at any subdivision meeting that any balloted man is not of the full height of five feet four inches, or is not approved upon examination by a surgeon, according to the directions of this act, and is not seised or possessed of an estate in land, goods, or money of the clear value of 100*l.*, and he shall make oath thereof; he shall be discharged; and, after amending the list, another person shall be balloted in his stead. (*a*)

Vacancy by death, discharge, or promotion.

§ 55. And when any militia-man who hath been sworn and enrolled shall become unfit for service, the colonel or commanding officer, with two deputy-lieutenants if the militia shall then be within the county, or the commanding officer *only* if it be absent therefrom, may discharge him, but another man shall not be balloted for in his room until such discharge be confirmed under the hands of two deputy-lieutenants at a meeting in the subdivision for which he was enrolled, or at any general meeting for the county.

§ 56. And when any private militia-man shall *die*, or be appointed a *serjeant*, *corporal*, or *drummer* in the militia, or shall be *discharged* in manner aforesaid as unfit for service, by a *court-martial*, the vacancy thus occasioned shall be certified by the commanding officer to the clerk of the general meetings, who shall transmit the same to the deputy-lieutenants of the subdivision, and such vacancy shall be filled up by a fresh ballot.

§ 57. But no ballot shall take place in consequence of a vacancy occasioned by the appointment of any private to be a non-commissioned officer or drummer in the room of any non-commissioned officer or drummer reduced to the ranks, until such reduced officer or drummer shall have obtained his discharge.

43 G. 3. c. 51. Where a man is provided in the room of one promoted,

§ 58. Where any private man shall be appointed a serjeant, corporal, or drummer, in consequence of any vacancy occasioned by the death or discharge of any non-commissioned officer or drummer, [or by stat. 43 *G.* 3. *c.* 50. §. 11. in consequence of any augmentation,] and the parish or place for which such man was then serving shall provide another in his stead, any two deputy-lieutenants acting for the subdivision wherein such parish shall be situate, may certify the same to the justices assembled at

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(*a*) If a person balloted is found at the time of enrolment to be unqualified for the service, and another is balloted in his place, out of the same list, this is a continuance of the same ballot, and is a legal ballot. *Astley* v. *Ray and others*, 2 *Taunt.* 214.

the next general or quarter sessions, who shall order a sum not exceeding the average price paid for a substitute or volunteer in such parish, or any adjoining parish, to be paid out of the county rates to the churchwardens and overseers of the poor of the parish so providing another man, whether such man shall serve personally or by substitute, and to be applied in aid of the poor rates in such parish or place.

42 G. 3. c. 90.

the quarter sessions may order a sum to be paid out of the county rates.

§ 59. And whenever any certificate signed by the commanding officer of any corps of militia shall be transmitted to the deputy-lieutenants of the subdivision for which any private man shall have been enrolled, of his having died, or been appointed a serjeant, corporal, or drummer, in the militia, or been discharged as unfit for service, or by sentence of a court-martial, such vacancy shall be filled up by ballot immediately after the receipt of such certificate, except in such cases as are excepted.

To be filled up by ballot.

§ 60. And any two deputy-lieutenants at their several subdivision meetings shall ballot for militia-men in the room of those actually serving whose terms of service will expire before the 20th day of *November* next ensuing the holding of such meetings, and shall at a following meeting, to be holden as soon as conveniently may be, proceed to enrol the said balloted men or their substitutes; and the commanding officer may from time to time discharge any man whose time of service will expire before the 20th day of *November* then next ensuing, and receive any other man in his room who shall have taken the oath and been enrolled according to the directions of this act; and every such man so discharged, if serving for himself, shall be entitled to the same immunity from further service as if he had served his full term; and if he were serving as a substitute, then the person for whom he served shall be entitled to the like immunity.

Men to be balloted for, in the room of those whose service will expire before Nov. 20. ensuing.

8. Exemptions from serving in the Militia.

By stat. 42 *G*. 3. *c*. 90. § 43. No peer of this realm, nor any person being a commissioned officer in H. M.'s other forces, or in any one of H. M.'s castles or forts, nor any officer on the half-pay of the navy, army, or marines; nor any non-commissioned officer or private man serving in any of H. M.'s other forces, nor any commissioned officer serving, or who has served four years in the militia; nor any person being a resident member of either of the universities, nor any clergyman; nor any licensed teachers of any separate congregation, whose place of meeting shall have been duly registered within twelve months previous to the general meeting appointed to meet in *October* for the purposes of this act; nor any constable or other peace officer, nor any articled clerk, apprentice, seaman, or seafaring-man, nor any person mustered, trained, or doing duty or employed in any of H. M.'s docks or dock-yards for the service thereof, or employed and mustered in H. M.'s service in the Tower of *London*, *Woolwich Warren*, the several gun-wharfs at *Portsmouth*, or at the several powder mills, powder magazines or other storehouses belonging to H. M., under the direction of the board of ordnance; nor any person being free of the company of watermen of the river *Thames*; nor any poor man who has more than one child born in wedlock;

42 G. 3. c. 90. Certain persons exempt from service.

44 G.3. c.54. nor, by 44 *G.* 3. *c.* 54. § 7. 8. any person enrolled and serving as an effective member of any corps of yeomanry or volunteers, and who shall be duly returned and certified as such, shall be liable to serve personally or by substitute; and no person having served personally, or by substitute, according to the directions of any former act or acts relating to the militia, or under this act, shall be obliged to serve again, until by rotation it shall come to his turn; but no person who has served only as a substitute or volunteer in the militia shall be thereby exempted from serving again, if he shall be chosen by ballot.

52 G. 3. c. 38. And by stat. 52 *G.* 3. *c.* 38. § 39. All persons who may hereafter be enrolled to serve in the local militia shall be exempt from service, and shall not be liable to be balloted to serve in the regular militia for one year from the expiration of their period of service in the local militia, but no person shall be entitled to claim any such exemption who shall not produce a certificate signed by the commanding officer of the regiment of local militia to which he shall belong; or in case of his removal from the county in which he may have been originally enrolled, then by the commanding officer of the regiment in which he may have been subsequently serving, that he attended at the last period of annual training and exercise, or that he was prevented by illness or bodily infirmity, certified to his commanding officer at the last period of annual training and exercise, or that he was absent by permission of his commanding officer.

19 G.3. c.44. Dissenters in holy orders being preachers or teachers of dissenting congregations.

By stat. 19 *G.* 3. *c.* 44. Every person dissenting from the church of *England*, in holy orders, or pretended holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of dissenting protestants, who shall at the general sessions of the place where he lives, take the oaths of allegiance, supremacy and abjuration, and subscribe the declaration against popery of the 30 *C.* 2. and a declaration that he is a christian and a protestant, and believes the doctrines of the Old and New Testament, shall be exempted from serving in the militia of this kingdom.

52 G.3. c.155. Teachers having taken the oaths, &c. exempt from offices, and from the militia.

By stat. 52 *G.* 3. *c.* 155. § 9. Every person who shall teach or preach in any congregation or assembly for religious worship of protestants, as mentioned in the former clauses of that act, who shall employ himself solely in the duties of a teacher or preacher, and not follow or engage in any trade or business, or other profession, occupation, or employment, for his livelihood, except that of a schoolmaster, and who shall produce a certificate of some justice of the peace, of his having taken and made and subscribed the oaths and declaration specified in that act, shall be exempt from being balloted to serve and from serving in the militia or local militia of any county or place in any part of the U. K.

See *Rex* v. *the Justices of Denbighshire.* Vol. I. tit. Dissenters.

Articled clerk. *Articled clerk.*] *Gerrard's case*, 2 *Blac. Rep.* 1123. In the C. P. upon a rule to shew cause why a writ of privilege should not be granted to exempt Mr. *Gerrard*, an attorney, and one of the secondaries of the court, from serving as a militia-man in the West regiment of the *Middlesex* militia, into which he had been balloted; the court were unanimous that insomuch as the service required by the militia laws might, at the option of the party balloted, be commuted for a sum of money, the privilege should not be allowed.

9. Swearing and inrolling: and herein, Of Substitutes.

By stat. 51 *G*.3. *c*. 118. Every person who shall be raised by ballot for the militia under any act in force at the passing of this act or under any future act, and appearing and serving in person, shall take the following oath instead of the oath appointed by stat. 42 *G*.3. [*c*.90.] 51 G.3. c. 118.

I A. B. *do sincerely promise and swear, That I will be faithful and bear true allegiance to his majesty king* George, *and that I will faithfully serve in the militia in any part of the united kingdom of* Great Britain *and* Ireland, *for the defence of the same, during the time of five years for which I am enrolled, unless I shall be sooner discharged.* Oath of balloted men.

And every substitute, hired man, or volunteer, shall take the following oath:—

I A. B. *do sincerely promise and swear, That I will be faithful and bear true allegiance to his majesty king* George, *and that I will faithfully serve in the militia in any part of the united kingdom of* Great Britain *and* Ireland, *for the defence of the same, during the time of five years, or for such further time as the militia shall remain embodied, if within the space of five years his majesty shall order and direct the militia to be drawn out and embodied, unless I shall be sooner discharged.* Oath of substitute or volunteer.

The following oath to be taken on appointment of non-commissioned officers and drummers:—

I A. B. *do sincerely promise and swear, That I will be faithful and bear true allegiance to his majesty king* George, *and that I will faithfully serve in the militia in any part of the united kingdom, for the defence of the same, until I shall be legally discharged.* Oath.

By stat. 43 *G*.3. *c*.50. § 9. Previously to enrolment, every balloted man, substitute, and volunteer shall be examined upon oath before the deputy-lieutenants, as to his residence, age, and family, which oath is to be as follows:— 43 G.3. c.50. Men, before enrolment, shall be examined upon oath as to their residence, &c. Oath.

I —— *do make oath that I am by trade a* ———, *and I have been usually resident in the parish of* ——, *in the county of* ——; *that I am unmarried* [or, *have a wife living*, as the case may be]; *and that I have no children* [or, *only one child born in wedlock*]; *and that I have no rupture, nor ever was troubled with fits, and am no ways disabled by lameness or otherwise, but have the perfect use of my limbs: that I am not a seaman or seafaring man or an apprentice; and that I do not belong to his majesty's navy, army, or marines, nor to any other corps of militia. As witness my hand at* ——, *the* ——— *day of* ———, 18—. *Sworn before me at* ——— *this* ——— *day of* ——— 18—.
Witness present.

By stat 42 *G*.3. *c*.90. § 52. No man shall be approved or enrolled, either as a balloted man, or as a substitute or volunteer, until he shall have been carefully examined by some surgeon of competent skill, and reported by him to be neither ruptured, lame, maimed, nor afflicted with any disorder that may render him unfit 42 G.3. c.90. No man to be enrolled until approved by a surgeon.

42 G.3. c.90. to serve, but to be in every respect able and fit for service; and the deputy-lieutenants or any two of them assembled at their sub-division meetings shall, in all cases before they proceed to enrol any man for the militia, cause such examination to be carefully made; and they may require the attendance of any surgeon of any regiment or corps of the militia of the county, riding, or place for which any man is to be enrolled, if any such surgeon be within a reasonable distance, and can conveniently be had, or otherwise to require the attendance of any other competent surgeon for that purpose, and a reasonable allowance not exceeding 10*s*., increased by stat. 53 *G.3. c.*81. § 2. to one guinea, shall be made to the surgeon performing such examination, for every day he shall actually attend for that purpose, and shall be paid to him in like manner as allowances are directed to be paid to subdivision clerks.

55 G.3. c.65. Attendance and allowance of surgeons of militia if within ten miles: otherwise of some other surgeon.

But now by stat. 55 *G.3. c.*65. § 8. Every surgeon of militia who shall be required by any two deputy-lieutenants to attend the enrolment of any militia-man for the purpose of examining him at any place, not more than ten miles from the head-quarters of the regiment where he is bound to reside, is so to attend without any fee or reward, except an allowance of one shilling for each mile of going to and returning from such place of attendance; provided that if no surgeon of the militia reside within such distance of the place of enrolment, then any two deputy-lieutenants may summon any other competent surgeon to attend, and who is to be entitled to a sum not less than one guinea, nor exceeding two guineas, as the deputy-lieutenants shall direct, (*a*) for each day's attendance. And every surgeon of militia or other surgeon is, previously to such examination, to take the following oath before some deputy-lieutenant.

His oath.

I A. B. *do swear, That I will, to the best of my ability, faithfully and truly report as to the fitness for service of the man or men about to be submitted to my examination, and that I will not receive from any of them any fee or reward whatever for any such examination.*

43 G.3. c.50. If any person shall refuse to be examined as to his fitness to serve, he may be imprisoned.

By stat. 43 *G.3. c.*50. § 14. If any person, whose name shall be inserted in any list made and amended, and whose name shall be drawn upon the ballot, shall refuse, when required by any two or more deputy-lieutenants, justices, or magistrates, to be examined as to his fitness to serve, he may, at their discretion, be imprisoned for any time not exceeding one week.

43 G.3. c.100. Persons so imprisoned are still liable to serve.

By stat. 43 *G.3. c.* 100. § 1. Every balloted man who shall be imprisoned for refusing to be examined as to his fitness to serve, shall, notwithstanding, be liable to be enrolled to serve if he shall appear to the deputy-lieutenants a proper person to be so enrolled.

42 G.3. c.90. To be enrolled.

By stat. 42 *G.3. c.*90. § 41. And every person chosen by ballot shall be enrolled (in a roll to be then and there prepared for that purpose) to serve as a private militia-man, for the space of five

(*a*) These allowances are no longer paid by the receivers-general of counties on the orders of the deputy-lieutenants, but by the war office on application thereto. See War Office Circular to Surgeons of regiments of militia in G. B. Dated 23d *Aug*. 1823. Signed *L. Sulivan.*

years; provided that if any such person shall produce for his *substitute* a man of the same county, riding, or place, or of some adjoining parish or place, whether in the same county or riding or not, able and fit for service, who shall have not more than *one* child born in wedlock, and who shall be examined and approved, such substitute shall be enrolled to serve in the militia of such county, as a private for the space of five years; and also for such further time as the militia shall remain embodied, if within the space of five years H. M. shall order such militia to be drawn out and embodied. And any balloted person for whom such substitute shall be so produced, approved, enrolled, and sworn, shall be exempt from service in the same manner as if he had personally served. 42 G.3. c.90. Substitutes to be accepted.

§ 42. If the churchwardens or overseers of any parish or place, shall with the consent of the inhabitants taken at a vestry, or at any other meeting to be holden for that purpose, of which three days' public notice shall be given, specifying the cause of calling such vestry or meeting, provide and produce at any subdivision meeting for balloting any volunteers who shall be examined and approved, they shall then and there be sworn in, and inrolled to serve for such term and on the same conditions as is provided in the case of substitutes produced by persons chosen by ballot; and only so many shall be chosen by ballot as shall be wanted to make up the whole number to serve for such parish. And if such churchwardens or overseers shall give to such volunteers any sums of money to serve not exceeding 6*l.* each, they may make a rate on the inhabitants according to the rate then made for the relief of the poor; which rate being approved by one justice, the said churchwardens or overseers may collect and reimburse themselves such sums as they shall have so paid; and the overplus (if any) shall be applied as part of the poor's rate. And if any shall refuse to pay such rate, one justice on complaint thereof by such churchwarden or overseer may levy the same by distress.—But no balloted person, who shall have served by himself or by substitute, according to the directions of this or any other act, or who shall be then serving himself or by substitute, shall be liable to pay to any such rate. And any person thinking himself aggrieved by such rate, may appeal to the next sessions in like manner as against the poor rate. Parishes may offer volunteers without balloting. Appeal.

By stat. 43 *G.* 3. *c.* 50. § 7. No seaman or seafaring-man shall be enrolled to serve either as a substitute or as a volunteer. 43 G.3. c.50. No seaman to be a substitute.

By stat. 42 *G.* 3. *c.* 90. § 44. And one deputy-lieutenant may administer the oath hereinbefore required to be taken by any such balloted man, volunteer, or substitute, qualified as this act requires, he having been duly examined and approved, and shall require the clerk of the subdivision to enrol the name of every such person, together with the date of the day on which the said oath was administered, in the roll of such subdivision. 42 G.3. c.90. One deputy-lieutenant may administer the oath.

§ 36. The clerks of all subdivision meetings shall within fourteen days after such meeting, transmit to the clerk of the general meetings of the county or place, fair and true copies of such rolls as shall be signed at such subdivision meeting; and upon neglect to make such return, or wilfully making a false return, he shall forfeit for every such offence 20*l.* Penalty on clerks of subdivision meetings for making false returns.

42 G. 3. c. 90.

Deputy-lieutenants to class the men enrolled.

§ 54. And the deputy-lieutenants in their several subdivisions shall, as soon as they shall have enrolled the number of men required in their subdivisions, divide the men so enrolled into as many classes of the description hereinafter mentioned, as shall be found among such men; *viz.* in the first class, they shall put all the men under thirty years of age, and having no child or children living; and in the second class, all the men above thirty years of age, having no child or children living; and in the third class, all the men not having any child or children living under the age of fourteen years; and in the fourth class, all the men having any child or children, one of whom only shall be under the age of fourteen years; and in the last class, all the men not included in any of the former descriptions; and shall forthwith make out a list of such classes, and within three days after the completing thereof the clerk of such subdivision meeting shall transmit to the clerk to the general meetings a true copy of such list, to be by him entered in a book to be kept for that purpose.

Penalty of a balloted man not appearing to be sworn.

§ 45. And if any person chosen by ballot (not being one of the persons called Quakers) shall refuse or neglect to appear, and take the said oath *and serve in the militia* (*a*), or to provide a substitute to be approved as aforesaid who shall take the said oath, and sign his consent to serve as his substitute; he shall forfeit 10*l.* (*b*) (No. 4.); and at the expiration of five years be again liable to serve or provide a substitute; and in default of payment of such penalty, or of sufficient effects whereon to levy the same, the name of such person shall be entered on the roll, and he shall be delivered over to some proper officer of the regiment for which he was balloted, and shall be compelled to serve for such term, to be computed from the time of his being apprehended, as any other balloted person would be compellable to serve, and shall be subject to the same punishments for afterwards absconding or deserting as he would have been if he had appeared and been duly sworn and enrolled.

Quakers being balloted.

§ 50. If any quaker shall be balloted, and shall refuse or neglect to appear and take the oath *and serve in the militia* (*b*), or to provide a substitute to be approved as aforesaid, two deputy-lieutenants shall, if they think proper upon as reasonable terms as may be, provide and hire a fit person to serve as his substitute, who shall, after examination and approval, take the said oath, and subscribe his consent to serve, and be enrolled as other substitutes; and two deputy-lieutenants may levy (No. 5.) by distress and sale of the goods and chattels of such quaker such sum as shall be necessary to defray the expence of providing such substitute, rendering to such Quaker the overplus after deducting the charges of such distress or sale: and if sufficient distress cannot be found, and it shall nevertheless appear satisfactorily to

(*a*) It is submitted that the words "*and serve in the militia,*" should have been omitted, or "*to*" substituted for "*and.*" The penalty is intended to apply to the non-appearance and refusal to take the oath, and if not paid, the name of the balloted man is to be entered on the roll, after which *if he do not serve*, he will be considered a deserter. *Ed.*

(*b*) The 10th sec. of the 43 *G.* 3. c. 50. increasing the penalty from 10*l.* to 15*l.* is omitted, being considered as applicable only to the completion of the militia then embodied, and for the same reason, the 1st, 2d, 3d, 4th, 5th, 6th, and 8th sections of the same act are not inserted. *Ed.*

them that such quaker is of sufficient ability to pay the sum of 10*l.* they may commit (*a*) him to the common gaol for three months, or until he shall have paid such sum of money as they shall have agreed to pay for such substitute. And if any measures shall be used in making such distress which may by such quaker be thought oppressive he may complain to the deputy-lieutenants at their next meeting, who shall hear and finally determine the same. 42 G. 3. c. 90.

Quakers refusing to pay the rate made for volunteers.

§ 51. And where any rate shall have been made for providing volunteers, and the churchwardens and overseers shall make complaint to a justice that any Quaker had refused to pay his rate, such justice shall order such costs and charges to be paid for levying such distress as he shall think reasonable, not exceeding 10*s.* on each of the said Quakers where there are not more than two, and where there are a greater number, not exceeding 5*s.* on each. But no person shall be deemed a Quaker within the meaning of this act, unless he shall produce at some subdivision meeting a certificate under the hands of two reputable housekeepers of the people called Quakers, resident within the county, and dated within the three months immediately preceding the day on which it shall be produced, acknowledging him to be one of their persuasion.

Who shall be deemed Quakers.

43 G. 3. c. 50. Bounty money to Quakers' substitutes, how to be paid.

By stat. 43 *G.* 3. *c.* 50. § 12. Where any deputy-lieutenant shall provide a substitute for any Quaker, the money agreed to be paid to such substitute shall be paid to him upon the certificate of such deputy-lieutenant by the overseers of the parish or place for which he shall be provided out of the poor rates, and such sum of money shall be levied in the manner before directed and repaid to such overseers as have advanced the same. (*b*)

42 G. 3. c. 90. The enrolment of servants shall not vacate their contracts, unless the militia be embodied.

By stat. 42 *G.* 3. *c.* 90. § 61. If any servant, hired by the year or otherwise, shall be enrolled as a militia-man, such enrolment shall not vacate the contract between such servant and his master or mistress, or employer, unless the militia of the county or place for which he shall be enrolled shall be embodied or called out, or unless such person so enrolled shall leave the service of his master, mistress, or employer, for the purpose of being trained and exercised for 21 days, and shall not return again to the same service at the end of such 21 days, or as soon after as reasonably may be, allowing to his master, mistress, or employer an abatement from his wages in proportion to the duration of his absence, to be settled by a justice in the manner hereinafter mentioned; and where any dispute shall arise between such servant and his master or mistress, or employer, touching any sum due to such servant for or on account of his service performed before the time of his departure from service under the conditions of the said enrolment, or by being called out to join the militia in which he shall have been so enrolled, or touching any abatement to be made by such servant by reason of his absence for the purpose of being trained and exercised, on complaint made thereof to any justice for the county, or place where such

Servants to be paid their wages.

(*a*) See note (*b*) *infra.*

(*b*) This clause, it is to be observed, does not proceed to direct that if a distress cannot be found, the Quaker shall be committed according to the 50th sec. of stat. 42 *G.* 3. *c.* 90. *Ed.*

42 G.3. c.90. master or mistress or employer shall inhabit, such justice may hear and determine every such complaint, and examine upon oath every such servant, or any other witness, touching the same, and make such order for the payment of so much wages to such servant in proportion to the service he has performed, or such abatement from his wages in proportion to the duration of his absence from his service, as to such justice shall seem just and reasonable, provided the sum in question do not exceed 20*l.*; and in case of refusal or non-payment of any sums so ordered to be paid by the space of 21 days next after such determination, such justice may issue his warrant to levy the same by distress and sale of the goods and chattels of such master, or mistress, or employer, rendering the overplus to the owner, deducting the charges of distress and sale.

Substitutes not appearing to be sworn.

§62. And if any person shall receive any money from any other person to serve as his substitute, or from any churchwarden or overseer to serve as a volunteer, and shall neglect to appear at the usual meeting appointed for swearing the militia-men, or before some one deputy-lieutenant as aforesaid; he shall, on conviction before any deputy-lieutenant or justice, be obliged to return the money to the person from whom he received it; and shall also forfeit and pay to such person not exceeding 40*s.* nor less than 20*s.* at the discretion of such deputy-lieutenant or justice; and if such offender shall not immediately return the money, and likewise pay the said penalty, he shall be committed to the common gaol or house of correction for 14 days, or until the said sum shall be returned.

Justices may order payment of bounties to substitutes.

§63. And when any balloted man shall have engaged any person to serve as his substitute, or any churchwardens or overseers shall have engaged any person to serve as a volunteer as aforesaid; and such balloted man or churchwardens or overseers shall have agreed to pay the person so engaged a certain sum; two deputy-lieutenants or one justice may order such sum as shall appear to them or him to be due; to be paid to such substitute or volunteer after examination and enrolment, where the militia is not embodied. And in all cases where the militia shall be embodied at the time of such enrolment, such deputy-lieutenants or justice may direct any sum not exceeding one half of the money agreed to be given, to be paid to him forthwith, or to be advanced to such person or to such of his family and in such proportions as he shall request at the time of enrolment, and the remaining half to be paid to the clerk of the subdivision meeting, who is required to remit the same to the paymaster or battalion clerk, by whom it is to be paid to such substitute or volunteer, on his joining the regiment and being approved as a fit man; and in case he shall not join or be approved of, such money shall remain in the hands of the said paymaster, to be applied to the payment of some other substitute or volunteer in lieu of the one for whom such money shall have been remitted, and the payment thereof may be enforced in the same manner as is directed by the 20*G.* 2. *c.* 19. for recovering servants' wages; and every subdivision clerk, who shall fail to remit such money within one week after it shall have been so paid to him as aforesaid, shall forfeit 20*l.* for every offence.

§ 66. The money arising by penalties incurred for refusing to serve or to find substitutes shall be applied by any two deputy-lieutenants in providing substitutes for the persons who have paid the same (who shall be examined, approved, sworn and enrolled in like manner as other substitutes); and if any surplus remain, the same shall be paid to the colonels or other commandants, and be applied as part of the regimental stock; and the return of the amount of such penalties with the names of persons paying the same, shall be transmitted by the clerks of the subdivision meetings to the clerks of the general meetings. 42 G.3. c.90. Penalties how to be applied.

By stat. 43 *G*.3. *c*.50. § 15. And if any high constable, or chief or other constable, or any adjutant, quarter-master or serjeant in the militia, shall insure or take any money for the insurance of or be in any way concerned in any company, society, partnership, or office, for the insurance of persons for providing substitutes or volunteers, or for paying or returning any money for providing substitutes or volunteers in the militia for any who may be balloted to serve in the militia, he shall forfeit 50*l*., to be recovered as any penalty may be recovered under stat. 42 *G*.3. *c*.90. § 176. 43 G.3. c.50. Penalty on high constables, &c. providing substitutes or volunteers.

10. Inlisting and beating up for Volunteers.

By stat. 42 *G*.3. *c*.90. § 64. If any officer, serjeant, or other person, shall wilfully and knowingly inlist any man to serve in H. M.'s other forces who at the time of such inlisting shall be enrolled or engaged to serve in the militia, every such inlisting shall be null and void. And if any militia-man, at the time of offering to inlist, shall deny to such person recruiting for men that he is then actually enrolled and engaged to serve in the militia (which such officer, serjeant, or other person is required to ask every man offering to inlist); or shall offer himself to be enrolled and serve in any other regiment of militia, he shall, on conviction upon the oath of one witness before one justice, be committed to the common gaol or house of correction for any time not exceeding six months, over and above any penalty or punishment to which he shall be otherwise liable; and from the day on which his engagement to serve in the militia shall end, and not sooner, shall belong as a soldier to the corps in which he shall have been so inlisted. And the officer or other person knowingly so inlisting any such man, or not asking him if he belong to the militia, shall forfeit for every such offence 20*l*. And if any person serving in any of H. M.'s other forces, shall offer himself to serve and be enrolled as a substitute in the militia, he shall forfeit and pay 10*l*. to the informer; or be committed to the common gaol or house of correction, for any time not exceeding three months. 42 G.3. c.90. Inlisting into the regulars, or offering to serve in the militia elsewhere. Persons knowingly inlisting a militia-man forfeit 20l. Soldiers in the regulars offering to serve in the militia.

§ 65. And any person giving orders to any serjeant, drummer, or other person serving in the militia, to beat up in any city, town, or place, for volunteers to serve in the militia, shall, on proof thereof upon oath before one justice, forfeit 20*l*.; one moiety to the informer. And if such serjeant, drummer or other person shall refuse to declare upon oath before such justice from whom he received such orders, such justice shall commit him to the house of correction for any time not exceeding three months. Beating up for volunteers.

57 G. 3. c. 57.

Inlisting in the East India Company's forces, or offering to serve in the militia for another parish.

By stat. 57 *G.* 3. *c.* 57. § 3. Every officer or person who shall wilfully or knowingly inlist any militia-man for the *East India* company's service, shall be subject to the penalties imposed by the 42d of the king, for inlisting militia-men for H. M.'s other forces. And every militia-man offering to inlist in such service, who shall deny that he is a militia-man, or who shall offer himself to be enrolled, and be enrolled as a militia-man for any other place than that for which he shall then be enrolled and serving, although in the same regiment or corps, shall be subject to the provisions in the said act contained for the punishment and subsequent service of militia-men offering to inlist in H. M.'s other forces, or to be enrolled and serve in any other regiment of militia.

11. Forming and officering of Militia Regiments.

42 G. 3. c. 90. Formation of companies, regiment, &c.

By stat. 42 *G.* 3. *c.* 90. § 68. The militia of the several counties shall be formed into companies, to consist of not more than 120, nor of less than 60 private men; and to each of such companies there shall be *one captain*, and *one lieutenant*, and *one ensign:* and where the number of men raised for any county is sufficient, the militia thereof shall be formed into one or more regiments, consisting of not more than 12 nor of less than eight such companies: and where the number of men so raised is not sufficient to form a regiment, the same shall be formed into a battalion, consisting of not more than seven nor of less than four such companies; and where the number is not sufficient to form a battalion of four such companies, the same shall be formed into one corps of not less than three such companies. The field officers of such regiments, battalions, and corps shall in no case exceed the numbers and ranks following; (that is to say), in every regiment of not less than 800 privates, *one colonel*, *one lieutenant-colonel*, and *two majors;* in every regiment of not less than 480 privates, *one colonel*, *one lieutenant-colonel*, and *one major:* and in every battalion consisting of less than 480 privates, *one lieutenant-colonel*, and *one major;* and in every corps consisting of three companies, *one lieutenant-colonel* or *major*, and no other field officer. No colonel, or field officer in the militia, shall be a captain of a company. Every battalion of five companies or upwards may have one company of grenadiers or light infantry, to which *two lieutenants* shall be appointed instead of one lieutenant and one ensign. And every such regiment may have one company of grenadiers and one company of light infantry, to each of which companies *two lieutenants* shall be appointed instead of one lieutenant and one ensign. Provided, that to every company of ninety privates and upwards, there may be two lieutenants and one ensign, or three lieutenants, as the case may be.

Proportion of field officers.

Supernumerary officer may be appointed to men trained to the service of artillery.

§ 69. Provided always, that if H. M. shall at any time direct that any proportion of the militia shall be trained and exercised to the service of any artillery that may be attached to any regiment or battalion, H. M. may direct that a supernumerary officer or officers of the said regiment or battalion of such rank as he shall order, and being duly qualified, shall be appointed to the said men so directed to be trained and exercised.

Independent companies.

§ 70. And when the number of men shall not be sufficient to form a *battalion* they shall be formed into *independent companies*,

each company to consist of 120 private men at the most, and 60 at the least, with one *captain*, one *lieutenant*, and one *ensign* to each company. And H. M. may join together any number of such independent companies of the militia of different counties, or may incorporate them with any other regiment, provided the number of companies be not thereby made to exceed the number of companies of which a regiment, battalion, or corps is hereinbefore directed to consist. 42 G.3. c.90.

§ 71. And it shall be lawful for H. M., in every case for which no special provision is made by this act, to cause the militia of any county to be formed and regulated in such manner as to H. M. shall seem meet, in regard to the number of regiments, or to the uniting any number of companies of militia of any counties, not having respectively a sufficient number of men to form a distinct battalion or corps of three companies for each, conforming in every case, as near as the proportions of men will admit, to the establishment with respect to regiments, battalions, corps, and companies, in this act directed.

Where no provision is made, H. M. may order the militia to be formed as he shall think proper.

§ 72. And it shall be lawful for the lieutenant of any county to act as commandant of any regiment of militia for such county, during such time as there shall not be any colonel or other commandant appointed thereto; but no such lieutenant shall at any one time act as commandant of more than one body of militia, whether regiment, battalion, or corps; and where the lieutenant of any county shall take the command of any militia of the said county, not being, according to the provisions of this act, sufficient to form a regiment or battalion to be commanded by a colonel, such lieutenant shall notwithstanding be entitled to the rank of colonel, unless such militia shall be united with the militia of any other county as aforesaid: Provided, that no such lieutenant shall, in virtue or by reason of any such command as aforesaid, receive any greater pay than the proper commandant of such corps would be entitled to.

County lieutenant may act as commandant of the militia in certain cases.

§ 73. And when a battalion of militia is commanded by a lieutenant-colonel who shall have been commandant of the same for five years or longer, while embodied, it shall be lawful for the lieutenant of the county to which such battalion shall belong, with the approbation of H. M., to give to such lieutenant-colonel commandant a commission of colonel.

A lieutenant-colonel may have a commission of colonel in a certain period.

§ 74. And where the number of private men are sufficient to form a battalion of less than 480, but not less than 360 men, the lieutenant may appoint three persons, qualified as aforesaid, to serve with the rank of *colonel*, *lieutenant-colonel*, and *major*, but with no higher pay than if they were appointed *lieutenant-colonel*, *major*, and *captain*, respectively. And where the numbers are sufficient to form three, but not four companies, of 60 privates at the least, the lieutenant may appoint two persons with the rank of *lieutenant-colonel* and *major* respectively, but only one of them shall be entitled to any higher pay than that of captain. And where the number is not sufficient to form more than two companies of 60 privates at the least, the eldest *captain* shall serve with the rank of *major*, but shall only be entitled to the pay of captain.

How to be officered where the numbers are insufficient to form a regiment.

§ 75. And every officer of any militia regiment, being duly qualified, who may have accepted or shall accept a commission

Rank according to date of commission.

42 G.3. c.90. or appointment of the same rank in any other militia regiment, and shall thereby vacate his former commission, shall continue to rank in the general service according to the date of his commission or appointment of the same rank in the militia so vacated.

When a commandant shall be absent from G. B., the officer next in command shall be vested with the same powers, till the commandant shall return and notify his arrival to the clerk of the peace.

§ 76. And when any colonel or other commandant of any regiment of militia shall be absent from *G. B.*, and until he shall return thereto, and shall have notified his arrival to the clerk of the peace of the county to which such regiment shall belong, and to the commanding officer and adjutant thereof, it shall be lawful for H. M., by warrant under his sign manual, to direct and order that the officer next in command, residing in *G. B.*, shall in all cases act and serve as the commandant, and all powers and authorities which might have been exercised by such colonel or other commandant while resident in *G. B.*, shall be vested in and exercised by the officer next in command, who shall be resident in *G. B.*, with power to appoint the regimental or battalion clerk and agent to such regiment, in the same manner as such colonel or other commandant might have done, and he is to take security from such agent, and to be liable to make good all deficiencies that may happen from the said agent or from himself, upon account of the pay, clothing, or public stock of such regiment: Provided, that such officer so next in command as aforesaid, who shall assume the powers so given to him as aforesaid, shall, within seven days afterwards, notify the absence of such colonel, or other commandant, to the lieutenant of the county, and when the regiment or battalion shall be in actual service, to the secretary at war.

The officer next in command shall within seven days after assuming the command, notify the absence of the commandant.

The king may appoint adjutants from the army or militia, who shall retain their rank.

§ 77. The king shall appoint one proper person, who shall have served in some of the regular forces, or in the militia while embodied for at least five years, to be adjutant to each regiment; and such adjutant, if appointed out of the king's other forces, shall during his service in the militia, preserve his rank in the army as if he had continued in that service; and the lieutenant, on the recommendation of the colonel or other commandant of any regiment, may appoint the adjutant thereof to serve with the rank of captain, provided such adjutant shall have served five years in the militia while embodied, or in H. M.'s other forces, although he may not have the qualification requisite for captains. But no such appointment of captain shall be valid, unless it be specified in the instrument granting it in what regiment such adjutant has served, and what were the date or dates of his commission or commissions. But no adjutant so appointed to serve with the rank of captain shall, by virtue of the date of such appointment as aforesaid or otherwise, be entitled to rank above or to command any captain of a company in the militia. Nor shall such adjutant, by reason of such appointment, be entitled to receive any greater or other pay than that of adjutant.

No adjutant so promoted to take command of a company.

Surgeons.

§ 78. And in every case where the number of private militiamen raised in any county shall consist of not less than two companies of 60 private men each at the least, the lieutenant of such county may, with the approbation of H. M., appoint one fit and proper person, who shall have passed an examination at Surgeon's Hall, and received his certificate accordingly, to be surgeon of the regiment; and every such appointment shall recite the certi-

ficate of the person so appointed, and an attested copy thereof shall be transmitted to and filed with the clerk of the general meetings; and every such surgeon shall, while the militia to which he shall belong are disembodied, receive 10*s*. *per* day for every day of his attendance during any exercise of such militia under this act: [but by stat. 59 *G*. 3. *c*. 116. § 6. all officers are, for the periods during which they shall be called out for annual exercise, to be entitled to the same pay and allowance as when embodied]; and while embodied, receive the pay and allowance of a surgeon of infantry in H. M.'s other forces, and be subject to the like rules in every respect, as far as the same may be applicable; and he shall not be capable of holding any other commission in such militia, or of receiving any pay in respect thereof, during the time of his being such surgeon as aforesaid. [For his allowance for attending the subdivision meetings, see stats. 42 *G*. 3. *c*. 90. § 52., and 55 *G*. 3. *c*. 65., page 426. and for his pay and allowance while the militia is disembodied, see 5 *G*. 4. *c*. 33. § 1. page 414.

42 G. 3. c. 90.

Their pay.

59 G. 3. c. 116.

§ 79. And where the number of private militia-men raised in any county are sufficient to form a regiment or battalion, consisting of not less than three hundred and sixty privates, the colonel may, with the approbation of H. M., appoint one fit and proper person, who has served in H. M.'s other forces, or in the embodied militia, to be the quarter-master; and the lieutenant of the county, on the recommendation of the colonel, may appoint such quarter-master to serve with the rank of lieutenant or ensign, although he may not have the qualification required by this act for such commissions: Provided that he shall not be capable of holding any commission or receiving any pay in respect thereof in any company in the militia, during the time of his being such quarter-master.

Quarter-master.

§ 80. The colonel or other commandant of every regiment, consisting of not less than three companies, when not in actual service, may appoint a regimental or battalion clerk, who shall execute the office of paymaster; but where the number of private men shall not be sufficient to form three companies of sixty private men at the least, no clerk shall be allowed, but all monies required by this act to be paid to any such clerk shall be paid to the commanding officer, who shall account for the same in like manner in every respect as a regimental or battalion clerk.

Regimental clerk.

§ 81. But no *adjutant*, *surgeon*, *regimental* or *battalion clerk*, *paymaster* or *quarter-master*, shall be capable of being appointed captain of a company; nor shall any captain of a company be capable of being appointed to those places.

No adjutant, &c. to be appointed a captain.

§ 82. And no *officer* who is entitled to *half-pay* shall be deemed or taken to forfeit or quit such half-pay during the time he shall serve as *lieutenant*, *ensign*, *adjutant*, *regimental* or *battalion clerk*, *quarter-master*, or *surgeon* in the militia, but the same shall nevertheless continue; and instead of the oath usually required of half-pay officers to entitle them to the receipt of their half-pay, every such officer so entitled to half-pay and serving as aforesaid shall take the following oath:—

Half pay officers serving as subalterns, &c. may receive their half-pay on taking the following

I A. B. *do swear, That I had not between the ——— and the ——— any place or employment of profit, civil or military, under his majesty, besides my allowance of half-pay as a reduced*

Oath.

42 G. 3. c. 90. ——— *in* ——— *late regiment of* ———, *save and except my pay as lieutenant,* [*ensign, adjutant, regimental or battalion clerk, quarter-master, or surgeon,* as the case may be], *for serving in the militia.*

And the taking of the said oath shall, without taking any other oath, be sufficient to entitle such person to receive his half-pay.

Proportions of non-commissioned officers and drummers.

§ 83. Serjeants, corporals, and drummers shall be appointed to the militia in the following proportions; (that is to say,) when not in actual service there shall be one serjeant and one corporal to every thirty privates; and one drummer to every company, with an addition of one drummer to each flank company of regiments or battalions consisting of five or more companies: [but by stat. 57 *G.* 3. *c.* 57. § 4. H. M. may, by any order signed by the secretary of state, direct that there shall be retained on permanent pay when not in actual service, one serjeant and one corporal to every forty privates, and one drummer for every two companies, with an additional drummer for each flank company of regiments consisting of five or more companies:] and when the militia shall be drawn out into actual service, there shall be one serjeant and one corporal to every twenty privates, and an addition of one drummer to every company; and all serjeants, corporals, and drummers shall take the following oath; (that is to say;)

57 G. 3. c. 57.

Oath to be taken by them.

I A. B. *do sincerely promise and swear, That I will be true and faithful, and bear true allegiance to his majesty king* George, *and that I will faithfully serve in the militia within* Great Britain *for the defence of the same, until I shall be legally discharged.*

Serjeant-major and drum-major may be appointed.

And the commandant of every corps consisting of two or more companies, may appoint a *serjeant major;* and if three or more companies, a *drum major;* and all serjeants, corporals, and drummers, having received any pay as such, shall be deemed to be engaged and compellable to serve until legally discharged. But no person who shall keep any house of public entertainment, or who shall sell any ale or wine, or any brandy or other spirituous liquors by retail, shall be capable of being appointed, or of serving or receiving pay as a serjeant, corporal, or drummer in the militia.

Publicans excepted.

An additional corporal may be appointed.

If in any regiment there shall be a surplus of fifteen private men or upwards, after the appointment of one serjeant and one corporal to every thirty privates, such regiment shall be entitled to have one additional corporal when not in actual service for such surplus.

Commandants may discharge serjeants, &c. and appoint others.

§ 84. And any serjeant, corporal, or drummer may be discharged by the commandant, who may appoint any proper person in the room of every serjeant, corporal, and drummer who shall die, desert, or be discharged.

Extra drummers may be kept, as fifers or musicians.

§ 85. And in case the lieutenant for any county, or the commandant of any regiment, shall be desirous of keeping up a greater number of drummers than is herein directed to be employed as fifers or musicians, and shall be willing to defray the expences of such additional drummers, he may retain any number of the drummers employed or to be employed as fifers or musicians therein, over and above the number established by this act, or at any time hereafter engage any additional number of drummers to act as fifers or musicians, who shall continue to serve as drum-

mers so long as they shall receive the same pay and clothing as other drummers have, or better clothing in lieu thereof, and no longer. 42 G.3. c.90.

For the pay and allowances of the subaltern, staff, and non-commissioned officers of the militia when disembodied, refer to stat. 5 *G.* 4. *c.* 33. p. 444.

12. Training and Exercise.

By stat. 42 *G.* 3. *c.* 90. § 87. The militia shall be called out once in every year for the purpose of being trained and exercised for the space of twenty-one days [which term is by stat. 43 *G.* 3. *c.* 19. extended to twenty-eight; and again by stat. 55 *G.* 3. *c.* 65. § 5. may be for any period not exceeding twenty-eight days as H. M. may direct. And by stat. 57 *G.* 3. *c.* 57. § 1. H. M. by any order in council may suspend the calling out of the militia or any part thereof for training and exercise, and order and direct that no such training or exercise shall take place in any year.] And in every county in which it shall have been appointed that the whole shall not be trained or exercised at the same time, then the respective parts thereof shall be trained and exercised successively, until the whole of the men shall have been trained and exercised for the space of twenty-eight days; and for such purpose the men shall be called out to be so trained and exercised in such manner and proportion, at such time or times, and place or places as shall be appointed, with the approbation of H. M., by the lieutenant or deputy-lieutenants, at a general meeting of the lieutenancy to be holden as hereinbefore directed (No. 6.); or in default of any such meeting being holden, then by the lieutenant of the county, or by three deputy-lieutenants authorised by H. M. to act as aforesaid: Provided, that it shall not be lawful to order less than two companies of sixty private men at the least, with officers and serjeants, corporals and drummers, in proportion, to be trained and exercised together, unless the militia of the county do not amount to so many. Provided also, that the lieutenant or deputy-lieutenants, at any general meeting of lieutenancy, may alter the places appointed for assembling the men for exercise, and from time to time appoint other or additional places as they shall find expedient, giving the like notice thereof as is herein required to be given of the places first to be appointed.

At what time and place.

57 G. 3. c. 57.

42 G. 3. c. 90.

§ 88. Whenever any regiment to be raised under this act shall have been disembodied as hereinafter directed, it shall be lawful for H. M. to order and direct that such regiment shall not be trained or exercised in manner as is hereinafter directed for the space of twelve calendar months, to be calculated from the day of disembodying, or for such number of months not exceeding twelve months as H. M. shall think fit.

When any regiment shall have been disembodied, H. M. may order it not to be trained for twelve months.

§ 89. And during such time as any militia shall be assembled for the purpose of being trained and exercised, all things contained in any act of parliament which shall then be in force for punishing mutiny and desertion, and for the better payment of the army and their quarters, and in the articles of war made in pursuance of such act, shall be in force with respect to such militia, and to all the officers, non-commissioned officers, drum-

During the time of exercise, the mutiny act and articles of war shall be in force.

42 G.3. c.90.

urts-martial.

mers, and privates of the same, in all cases whatsoever, but so that no punishment shall extend to life or limb; and it shall be lawful for the officer commanding and present with any detachment or division of militia, called out to exercise, not being under the rank of captain, to order, when he shall think it necessary, a regimental court-martial to be held for the trial of any offence committed by any serjeant, corporal, drummer, or private, under and during his command; and if a sufficient number of officers shall not be present to constitute such court-martial, it shall be lawful for the commanding officer of the regiment, to which any such detachment or division shall belong, upon application made to him by the officer commanding such detachment or division for that purpose, to order a sufficient number of officers of proper rank to attend for the purpose of assisting at such court-martial, who shall forthwith attend the same and assist as members thereof; and the sentence of every such court-martial shall in every case be submitted to the commandant of the regiment, to which such detachment or division shall belong (or in his absence from the county, to the senior field officer within the same), for his approval thereof, who shall cause such sentence to be put in execution, mitigated, or remitted, as he shall, in his discretion, think best for the service.

Notice of the times and places.

§ 90. And notice of the times and places of exercise shall be sent by the clerk of the general meetings to the clerks of the sub-division meetings, and the deputy-lieutenants, at some sub-division meetings shall cause the men to be called out in such order as shall have been notified by the clerk of the general meetings, and for that purpose shall issue orders to the chief constables, with directions to forward the same to the constables or other officers of the several parishes or places; who shall cause such notices to be fixed on the doors of their churches or chapels respectively; or if any place shall have no church or chapel belonging to it, on the door of the church or chapel of some parish or place thereto adjoining; which shall be deemed sufficient notice to every militia man enrolled, notwithstanding any omission in the delivery of written notices hereafter directed. And such constables and other officers are required also to give notice in writing to the several militia men who shall be so called out, by serving them personally, or by leaving the same at their usual place of abode, to attend at the time and place mentioned in such order. And all such militia men shall duly attend according to such notices respectively.

Lists of the men to be sent to the commanding officers.

§ 91. The clerks of the several sub-division meetings shall within ten days after the receipt of such notices from the clerk of the general meetings, cause a full and true list specifying the name and date of the enrolment of all the persons enrolled within each sub-division respectively, and the time and place of exercise, to be transmitted to the commanding officer of the regiment, or to such person as shall be appointed by him to receive the same, aud a duplicate of such list to be transmitted to the adjutant, and where there is no adjutant, to the major or captain commandant.

Pay of men when called out to exercise.

§ 92. And the pay of every person enrolled to serve in the militia, when called out for the purpose of being trained and exercised, shall commence upon the day on which he shall join the regi-

ment, to which he shall belong, and not before: provided that if he shall have been prevented joining such regiment by sickness or other sufficient cause, and shall produce to the commanding officer a satisfactory certificate of such sickness, or other sufficient cause, such commanding officer shall direct an allowance of pay to be made to the person so prevented, according to the time mentioned in such certificate. 42 G. 3. c. 90.

§ 93. And in case any militia man shall, on his march to the place where he shall be ordered to attend for the annual exercise, be disabled by sickness or otherwise, it shall be lawful for any one justice of the county, or the mayor or chief magistrate of any city or place where such man shall then be, by warrant under his hand and seal, to order him such relief as he shall think reasonable, and the same shall be given by the officers of the parish, or place where such militia man shall then be; and the officers giving such relief shall, upon producing an account of the expenses thereof to the treasurer of the county, for which such man shall serve (such account being first allowed under the hand of a justice), be reimbursed such expenses by him, who shall be allowed the same in his accounts.

Militia man falling sick.

§ 94. All mayors, bailiffs, constables, tythingmen, headboroughs, and other chief magistrates and officers of cities, towns, parishes, tythings, and places, and (in their default or absence) any one justice inhabiting within or near any city or place (but no others), shall quarter and billet the officers, non-commissioned officers, drummers, and private men serving in the militia at the times when they shall be called out to annual exercise, in inns, livery stables, ale houses, victualling houses, and all houses of persons selling brandy, strong waters, cyder, wine, or metheglin, by retail, upon application made to any such mayors, or officers by H. M.'s lieutenant, or by the colonel or other commanding officer of the militia of the county, where they shall be so called out to exercise; and when the militia is not embodied nor called out to exercise as aforesaid, all mayors and other officers aforesaid, or (in their default or absence) any one justice shall order and provide convenient lodging with fire and candle in such houses as aforesaid, for the serjeants, corporals, and drummers of the militia.

Billeting.

Serjeants, &c. to be billeted, when the militia is not embodied

§ 95. And when the militia shall be called out to be trained and exercised, any justice of any county, being thereunto required by an order from the lieutenant, or from any deputy-lieutenant, or from the colonel or other commanding officer of any regiment, or division of militia, being within such county, shall issue his warrant to the chief constables of hundreds, or other divisions, or to the constables or other officers of the several parishes, or places from, through, near, or to which any such regiment shall be ordered to march, requiring them to provide such sufficient carriages to convey the arms, clothes, accoutrements, ammunition, and other stores, with able men to drive, as shall be mentioned in the said order; and in case such sufficient carriages and men cannot be provided within any such county, then any justice for any adjoining county, riding, or place, shall, upon such order as aforesaid being shewn unto him, issue his warrant in like manner within such adjoining county, to make up such deficiency of carriages and men. And such lieutenant, or commanding officer requiring such carriages and men, shall at the same time pay to

Carriages to be provided.

Rates to be paid for carriages.

42 G.3. c.90. every such chief constable, or other officer, for the use of the persons who shall provide the same, 1*s*. for every mile any waggon with five horses, and any wain with six oxen, or with four oxen and two horses, shall respectively travel; and 9*d*. for every mile any such cart with four horses shall travel, and so in proportion for any carriages drawn by any less number of horses or oxen; for which respective sums such chief constable, or other officer receiving the same, is required to give a receipt to the person paying the same; and every such chief constable, or other officer, shall order such person or persons having carriages, as they shall think proper, to provide and furnish such carriages and men according to the warrant aforesaid; and every person so ordered, is required to provide and furnish the same accordingly for one day's journey, and no more. And in case any such chief constable, or other officer shall be at any charges for such carriages over and above the money which shall be so received by them as aforesaid, such overplus shall be borne by every county, where such additional expense shall be incurred, and be repaid to them without fee or reward by the treasurer out of the public stock.

To go only one day's journey.

Allowance from the county.

Stoppages of pay during exercise.

§ 96. And when any regiment, or any division thereof shall be assembled for the purpose of being trained and exercised, the captain or commanding officer of every company may put the men of his company under stoppages not exceeding 4*d*. *per* day, for providing them with linen and other necessaries, and for defraying the expense of repairing any arms which shall have been broken or damaged by any such man's neglect: provided that every such captain shall account with each man for such stoppage, and after having deducted what shall have been paid for necessaries and for repairs as aforesaid, shall pay the remainder into the hands of the man to whom the same belongs, before he shall be dismissed from such training and exercise.

Returns to be made by the colonel.

§ 97. The colonel, or other commanding officer of every regiment, as often as his regiment shall be so called out to exercise, and within fourteen days from the time of assembling, shall return to the lieutenant of the county, a true state of such regiment, and a duplicate thereof, to the clerk to the general meetings to be filed; and where the militia of any county, shall be so ordered to be trained and exercised in parts or proportions successively in manner directed by this act, the officer commanding every such part or proportion for the time being, shall, within seven days after the assembling thereof, make a return of the state of the militia exercised by him or under his command to the commanding officer of the regiment, on pain of forfeiting 20*l*. for every such omission; and the commanding officer receiving such returns, shall, within fourteen days after all the returns of men belonging to his regiment, who shall have been so assembled, shall have been received by him, transmit a general return to the lieutenant of the county, and a duplicate thereof to the clerk of the general meetings to be filed; and in case any officer shall refuse or neglect for three months after the time herein appointed for making such returns so to do, he shall for every such offence forfeit and pay 50*l*.

Penalty for neglect.

Captains to make out a return of their companies. F.

§ 98. And the captain or commanding officer of every company called out to exercise shall, during the time of such exercise, make out a correct and accurate return (F) of the state of the classes of the men belonging to his company, specifying the se-

veral particulars therein mentioned, and the subdivision to which every such man shall belong, and shall deliver the same to the adjutant, or where there shall be no adjutant to the commanding officer, who shall within one month after every such exercise make out a general and accurate return of all such classes, according to such form and with such specification as aforesaid, and shall transmit the same to the clerk of the general meetings, and shall also transmit to the clerks of the sub-division meetings, extracts of such return, containing the state of the classes of men belonging to their respective sub-divisions; and such sub-division clerks shall forthwith correct the books of enrolment of their respective sub-divisions, so as to correspond accurately with such return; and the clerk to the general meetings shall forthwith, upon receipt of such return, and within two months after the expiration of such exercise as aforesaid, make out and transmit to one of H. M.'s principal secretaries of state, correct abstracts of all such returns made out in the form in the schedule marked (G), and every person so required to make any such return who shall refuse or neglect to make the same in manner aforesaid at the period hereby required for that purpose, shall for every such offence forfeit and pay 50*l*.

42 G.3. c.90.

Clerk to general meetings to transmit abstract of returns.

§ 99. And every militia man (not labouring under any infirmity incapacitating him), who shall not appear at the time and place appointed for his being exercised, (notice having been published and given as by this act required), shall be deemed a deserter, and if not taken until after the time of any such exercise, shall forfeit and pay 20*l*.; and also every militia man who having joined the regiment, to which he belongs, or any company, or division thereof, shall desert or absent himself during the time of any such exercise, and shall not be taken until after the time of such exercise, shall forfeit and pay 20*l*.; and if not immediately paid, the justice before whom he shall be convicted of such offence shall commit him to the house of correction to hard labour, or to the common gaol, for six months, or until he shall have paid the said penalty.

Men not appearing at the time and place of exercise.

§ 100. And in case any militia man shall desert or absent himself from his duty, and shall not return and voluntarily surrender himself to the adjutant or other officer, commissioned or non-commissioned, commanding at the place where the arms of the regiment shall be deposited, or shall not be taken within the space of three months from the time of his so deserting or absenting himself, then upon certificate thereof from the commanding officer of the regiment, to the deputy-lieutenants at any meeting of the sub-division for which he was enrolled, such deputy lieutenants or any two or more of them are hereby required to hold a subdivision meeting, and to proceed to ballot for another person in the room of such militia man; and in case he shall at any time thereafter return or be taken, he shall, notwithstanding any person shall have been chosen in his room, be compelled to serve in the same manner, and for the same term as if no person had been so chosen in his room.

If men absent themselves, and do not return, or are not taken within three months, others are to be balloted for.

But if they return, or are taken, they shall serve.

§ 108. Where any militia man shall not join the regiment, to which he belongs, at the time of annual exercise, or shall desert during such time, and shall not be apprehended before the expiration thereof: and where the commanding officer, or the adjutant of such regiment, or the commanding officer of the company, de-

Method of recovering deserters.

42 G.3. c.90. tachment, or division to which such offender belongs, shall receive information of the place where he shall be, any such commanding officer or adjutant may by writing under his hand describe his person, and also certify that he did not join the regiment at the time of annual exercise, or that he deserted during the time of annual exercise, (as the case may be) and send the same by a serjeant, corporal, or drummer of such regiment, to the adjutant or serjeant-major of the regiment, or to the senior serjeant when there is no adjutant or serjeant major of the corps of the county, or place wherein such offender is supposed to be; and the adjutant, serjeant-major, or senior serjeant to whom such certificate shall be sent, shall forthwith direct a party of the serjeants, corporals, or drummers of the regiment, to which he belongs, to assist in apprehending such offender, and in conveying him before some justice of the county, wherein he shall be apprehended; and if by his confession, or the testimony of any witness upon oath, or the knowledge of such justice, such person shall be found guilty of such offence, such adjutant, serjeant-major, or senior serjeant, shall order a party of the serjeants, corporals or drummers under his command, to convey such offender to the head quarters of the regiment of the next county or place in the way to the county, or place to which such offender belongs, and deliver him into the custody of the adjutant or serjeant major of such regiment, or senior serjeant as aforesaid, who shall cause him to be conveyed in like manner until such offender shall be delivered into the custody of the adjutant, or serjeant-major, or senior serjeant of the regiment, to which he belongs, who shall take him before a justice to be dealt with as this act directs in such cases; and from the time of his being so apprehended until he be brought before such justice, he shall be subsisted at the rate of 6*d.* *per* day from the county stock; for which subsistence such justice is hereby required to make such order upon the treasurer of the county, riding, or place.

Method of proceeding where persons are found, suspected to be non-commissioned officers or drummers who have deserted.

And if any serjeant, corporal or drummer shall desert from the regiment to which he belongs, it shall be lawful for any headborough, constable, or other officer of the town or place where any person who may be reasonably suspected to be such deserter shall be found, to cause such person to be apprehended and taken before any justice living in or near to such town or place, who shall examine such suspected person; and if by his confession, or the testimony of any witness upon oath, or by the knowledge of such justice, such suspected person shall be found to be a deserter, such justice shall forthwith cause him to be conveyed to the common gaol of the county or place where he shall be found, or the house of correction or other public prison in the town or place in or near to which such deserter shall be apprehended, there to remain until he shall be demanded by some person authorised to receive him as hereinafter directed; and shall transmit an account thereof to the clerk of the general meetings of the county to which he belongs;

Gaolers to receive the subsistence of deserters while confined, but no fee.

and the keeper of such prison shall receive the full subsistence of such deserter at the rate above specified for his maintenance during the time he shall continue in his custody, but shall not be entitled to any fee or reward on account of his imprisonment; and such clerk of the general meetings receiving such account shall immediately transmit a copy thereof to the commanding officer of the regiment of his county, and also to the adjutant or

other officer commanding the serjeants, corporals, and drummers of such regiment, and where there are more than one regiment in any county or place, such clerk shall send such copy to each of the commandants thereof; and also to each of the adjutants or officers aforesaid, and such commanding officer, adjutant, or officer shall, immediately on receiving such copy as aforesaid, send any serjeant, corporal, or drummer, or any party of the serjeants, corporals, or drummers of his regiment, to the place where such deserter shall be so confined, and shall also send by such serjeant, corporal, or drummer, or the serjeant commanding such party, an order under his hand and seal, to the keeper of the prison, requiring him to deliver such deserter to the person or persons therein named; and the serjeant, corporal, or drummer, to whom such deserter shall be so ordered to be delivered, in case only one shall be sent on such duty, shall apply to the adjutant or serjeant-major of the regiment, or to the senior serjeant of the corps of the county or place where such deserter shall be confined; and such adjutant, serjeant-major, or serjeant shall order a sufficient party of serjeants, corporals, or drummers under his command, to assist in conveying such deserter, and he shall be conveyed to the adjutant or serjeant-major of the regiment, or senior serjeant of the corps to which he belongs, in the same manner as before directed with respect to the conveying of privates; and such adjutant, serjeant-major, or serjeant, shall take such deserter before a justice of the county or place to which he belongs, who shall forthwith cause him to be conveyed to the common gaol, house of correction, or other public prison of such county, until a court martial shall be summoned and held for the trial of such deserter, according to the provisions of this act, when he shall be delivered to the person named in any order to be issued for that purpose under the hand and seal of the officer by whose authority such court martial shall be summoned, requiring the delivery of such deserter; and all gaolers and keepers of prisons shall (if required so to do by any serjeant, corporal, or drummer, employed in conveying any such militia-man, or serjeant, corporal, or drummer, so offending to the regiment to which he belongs) receive into their custody, and confine such offender for such time as they shall be respectively so required as aforesaid, not exceeding 24 hours; and upon refusal so to do, shall forfeit the sum of 20*s.*; and all serjeants, corporals, and drummers, while they are employed in executing such duty as aforesaid, and all other serjeants, corporals and drummers, while on any march, or employed on any duty upon which they may be commanded by any legal authority, shall be billeted in like manner as serjeants, corporals, or drummers belonging to H. M.'s other forces, employed in apprehending and conveying deserters, are to be billeted.

[Margin: 42 G.3. c.90.]

[Margin: Gaolers to receive and confine deserters, on penalty of 20s.]

[Margin: Serjeants, &c. conveying deserters, or on any march, to be billeted.]

§ 109. And the justice before whom any deserter shall be convicted shall issue his warrant to the clerk of the regiment to which such deserter shall belong, or (where there is no clerk) to the commanding officer, requiring such clerk or commanding officer to pay 20*s.* out of the regimental stock to the person who apprehended such deserter, which such clerk or commanding officer is required to pay accordingly upon demand.

[Margin: Reward for apprehending deserters.]

§ 110. And if any person shall harbour or conceal any deserter knowing him to be a deserter, he shall forfeit 5*l.*

[Margin: Concealing deserters.]

13. Arms and Accoutrements.

42 G. 3. c. 90. Pawning or damaging arms, &c.

By stat. 42 *G.* 3. *c.* 90. § 101. All muskets delivered for the service of the militia shall be marked distinctly in some visible place with the letter M, and the name of the county to which they belong: and in case any militia-man shall sell, pawn, or lose any of his arms, clothes, accoutrements, or ammunition, or neglect or refuse to return the same in good order to his captain, or to the person appointed to receive the same, he shall for every such offence forfeit not exceeding 3*l.*; and if he shall not immediately pay such penalty, the justice before whom he shall be convicted shall commit him to the house of correction, to be kept to hard labour for any time not exceeding three months, or until be shall have paid the said penalty.

Penalty for buying militia arms, &c.

§ 102. And if any person shall knowingly and wilfully buy, take in exchange, conceal, or otherwise receive any militia arms, clothes, or accoutrements, or any regimental necessaries, being provided for the soldier and paid for by deductions out of his pay, or any public stores or ammunition whatever delivered for the militia, upon any account or pretence whatsoever, contrary to the true intent of this act, he shall forfeit for every such offence 10*l*; and if he shall not immediately pay, and shall not have sufficient goods and chattels whereon to levy such penalty, the justice before whom he shall be convicted shall commit him to the common gaol for six months, or until he shall have paid the said fine, or shall cause such offender to be publicly or privately whipped, at the discretion of such justice.

Arms to be deposited in a proper place.

§ 106. The arms, accoutrements, clothing, and other stores, belonging to every regiment, when not embodied, shall be kept in such convenient place as the colonel or other commandant shall direct, with the approbation of the lieutenant; and the general meeting of the lieutenancy may order and direct a convenient and proper place to be provided or built for that purpose, if no such place can be found; the cost to be paid by the treasurer out of the county rates.

5 G. 4. c. 33.

By stat. 5 *G.* 4. *c.* 33. § 4. The quarter-master, and when no quarter-master is appointed, the paymaster shall have the charge and care of the arms, accoutrements, clothing, necessaries, and other stores, under the superintendence of the colonel on commandant.

14. Clothing, Pay, Allowances, Privileges, and Exemptions.

Pay of the disembodied militia.

By stat. 5 *G.* 4. *c.* 33. § 1. The secretary at war shall cause to be issued the whole sum required for the regular militia, when disembodied, for the uses following: *viz.* For the pay of the militia, at the rate *per diem* of 8*s.* for each adjutant, 6*s.* for each paymaster in corps consisting of three companies and upwards, 5*s.* in corps of two companies, 4*s.* for one company, 6*s.* for each surgeon, 5*s.* for each quarter-master, where one had been appointed in corps while embodied, at an establishment of not less than 360 privates, and 3*s.* a day at a less establishment, 2*s.* 6*d.* for each serjeant-major, having been serjeant-major of a provisional battalion

of militia, 1*s.* 10*d.* for each serjeant-major in corps of two or more companies, 2*s.* for each serjeant having been a colour-serjeant in one of the provisional battalions of militia, 1*s*, 10*d.* for each serjeant doing the duty of quarter-master-serjeant, while no quarter-master is appointed, 1*s.* 6*d.* for each serjeant, 1*s.* 2*d.* for each corporal, 1*s.* 6*d.* for the drum-major in corps of three or more companies, 1*s.* for each drummer. 5 G.4. c.33.

But serjeants, corporals, and drummers, absent on furlough or licence, are, during such absence, to have the following rates of pay, viz. 2*s.* for every serjeant major, having been serjeant-major of a provisional battalion, 1*s.* 6*d.* for a serjeant having been a colour-serjeant, 1*s.* 4*d.* for a serjeant-major in corps of two or more companies, 1*s.* 4*d.* for every quarter-master serjeant while no quarter-master is appointed, 1*s.* for every other serjeant, 8*d.* for a corporal, 1*s.* for a drum-major in corps of three or more companies, and 6*d.* for every drummer. Pay on furlough.

And also for clothing, when full clothing shall be provided by the commandant, at the rate of 5*l.* 12*s.* 1*d.* for each serjeant-major and quarter-master serjeant, when no quarter-master is appointed, 3*l.* for each serjeant, 1*l.* 17*s.* 4*d.* for each corporal, 2*l.* 18*s.* 7*d.* for each drum-major and drummer, and 1*l.* 17*s.* for each private, and so in proportion, when part only of the clothing shall be provided by the commandant, together with the actual expence of package and carriage, and such charges for altering and fitting the clothing as shall have been certified by the secretary at war. And the non-commissioned officers and drummers on constant pay, and resident at head-quarters, are to be clothed once in two years. Clothing.

And also at the rate of 2*d.* *per* month for each private man and drummer, for defraying the contingent expences of each regiment or corps. Contingent expenses.

§ 2. Any paymaster of disembodied militia being either on naval or military half-pay, or entitled to any allowance as having served in the regular forces, or navy, or marines, is empowered to take the above rates of disembodied pay, together with his half-pay or allowance, on his taking the following oath before some justice: Paymaster.

I A. B. *do swear that I had not between the* ——— *and the* ——— *any place or employment of profit, civil or military, under his majesty, besides my allowance of half-pay as a reduced* ——— *in his majesty's army or navy, or marines,* [as the case may be,] *save and except my disembodied pay* [*of six shillings, five shillings, or four shillings,* as the case may be] *as paymaster of the* ——— *militia.*

§ 3. 4. & 5. Every adjutant, paymaster, surgeon, quarter-master, non-commissioned officer, and drummer, on permanent pay of regular militia when disembodied shall be constantly resident within the place where the arms of the corps are kept, or within such reasonable distance of the depôt as shall be sanctioned by the secretary at war. And every such person is to forfeit his pay for any period during which he shall be absent except when absent by leave of the commandant, which leave is not to extend beyond three calendar months in one year, nor to a greater proportion than one-third of the non-commissioned officers and drummers, at the same time, except in case of certified sickness. And the The staff and non-commissioned officers to reside at the place where the arms are kept.

5 G.4. c.33. quarter-master (and, if no quarter-master, the paymaster) shall have the charge and care of the arms, accoutrements, clothing, necessaries and stores, under the superintendence of the colonel: And the pay-master shall out of the allowance of 2*d.* *per* month for each private man and drummer, pay such sums of money as may be necessary for the repair of arms and other usual contingent expences, upon an order in writing signed by the colonel; and after payment thereof he shall three times in the year make up accounts of all such money, and of the expenditure thereof, shewing the balances remaining in his hands (which balance shall form a stock-purse for the use of the regiment,) and transmit the same to the colonel, to be by him examined, allowed, and signed. And in the occasional and unavoidable absence of the adjutant from the place where the arms are kept, or during any vacancy in the appointment of an adjutant, the serjeants, corporals, and drummers, are to be under the command of the quarter-master, and if no quarter-master, then of the paymaster, who are required to render the same returns and perform such other acts as are by law required from the adjutant.

Pay when called out for training. § 6. The officers, non-commissioned officers, drummers, and privates shall, for the periods during which they shall be called out for annual exercise or training, be entitled to the same pay and allowances as when embodied.

Allowances to subalterns, &c. § 7. The following allowances shall be paid to every subaltern officer and surgeon's-mate, who held or shall hold a commission in the militia, and was or shall be serving therein when the corps was or shall be disembodied, viz. to a lieutenant 2*s.* 6*d.*; an ensign 2*s.* and a surgeon's-mate 2*s.* 6*d.* *per diem* each. All officers serving with the rank of captain-lieutenant to be deemed lieutenants, and of second lieutenants to be deemed ensigns for the purposes of this act, and the allowances are not to be received during the time of annual exercise.

Exception. § 8. Provided that no person possessed of such an estate or income as will by law qualify him to hold the commission of captain of a company, nor any adjutant, surgeon, paymaster, or quarter-master of militia, nor any officer on full pay of the navy, army, or marines, shall be entitled to the said allowances or any part thereof.

Oaths to be taken by them. § 9. The subaltern officers, surgeons'-mates, and assistant surgeon, claiming such allowances shall, before receiving the same, take and subscribe before some one justice the following oath:—

I A. B. *do swear that I belonged to the* ——— *of militia when the same was disembodied, and that I have continued to serve therein from that time until the* ——— *day of* ——— *inclusive, as a lieutenant, ensign, surgeon's-mate, or assistant-surgeon,* [as the case may be,] *and that I was not in my own right or in the right of my wife, during any part of the period for which I now claim to receive any allowance, that is to say, from the* ——— *day of* ——— *to the* ——— *day of* ———, *both inclusive, in the actual possession and enjoyment or receipt of the rents and profits of lands, tenements, or hereditaments of such an annual value above reprizes as would qualify me to hold a commission of captain of a company in the militia; that I have not during the above period held the appointment of adjutant, surgeon, paymaster, or quarter-master in any regiment, battalion, or corps of militia; that*

I did not hold or enjoy, nor did any person for me hold or enjoy, during the said period, any office or income whatsoever from the public, or from any other government, besides the allowance of ——— a-day now claimed, except my half-pay as a ——— of the army, or navy, or marines, or of a provisional battalion formed from the militia [as the case may be,] *and any pay and allowance from the ——— to the ——— both days inclusive, during which period the corps was assembled for training and exercise.* 5 G.4. c.33.

So help me GOD.

§ 10. Every subaltern officer and surgeon's-mate and assistant-surgeon, claiming the benefit of this act, shall regularly attend the annual exercise of the regiment, and punctually do his duty on pain of forfeiting his allowance, as well as the rest of his pay which may be due for the current year in which he shall neglect or refuse to attend, and certificates of his having so attended and performed his duty, signed by the commanding officer, shall be furnished by the said commanding officer to the paymaster. But such officer may, for any special cause or unavoidable necessity, grant such subaltern, surgeon's-mate or assistant-surgeon leave of absence during the whole or any part of such annual exercise; and in that case the reason of such absence, as well as the duration thereof, are to be carefully and truly specified in certificates (in lieu of those before-mentioned,) to be signed by the commanding officer, and furnished to the paymaster. Subalterns, &c. to attend the annual exercise.

§ 11. Provided, that if the regiment after the disembodying thereof, and before the time fixed for payment of the allowances, shall not be called out for annual exercise, every such subaltern, surgeon's-mate, and assistant-surgeon, having taken and subscribed the before-mentioned oath, shall be entitled to the said allowance as if he had regularly attended the annual exercise and obtained a certificate thereof. Provision in case of the regiment not being called out.

§ 12. Upon such oaths and certificates, or where the militia shall not have been called out for annual exercise, upon the said oaths being produced to the paymaster (to be preserved by him as vouchers) he is required to pay the allowance for three months, or other proper period, on the 24th *June*, and the other proportions of the same on the 24th *September*, the 24th *December*, 1824, and the 24th *March*, 1825. Times of payment of allowances.

§ 13. & 15. The subalterns, surgeons'-mates, and assistant-surgeon, claiming the benefit of this act, shall at all times be liable to serve in the regiment to which they shall belong whenever it may be embodied and called out on actual service; and in case of neglect or refusal to attend when called upon at such times or for such occasions as shall be required of them, in pursuance of the laws in force respecting the militia when disembodied, are, upon the same being certified to the lord-lieutenant and paymaster, by the commandant of the regiment, to forfeit their allowance, and also to be considered as having resigned and vacated their commissions; and the allowance is not to be paid during the time the militia shall be embodied or ordered out on actual service. Allowances to be forfeited in certain cases.

§ 16. Any person on naval or military half-pay, or entitled to any allowance as having served in any of H. M.'s forces, or navy, or marines, and serving in the militia, may receive and take the pay and allowances by this act directed to be made to field- Half-pay officers may receive the pay and allowances of militia officers

5 G. 4. c. 33.

during the annual training.

officers, captains, lieutenants, ensigns, adjutants, quarter-masters, surgeons, surgeons'-mates, and assistant-surgeons, when assembled for annual training, without preventing him from receiving his half-pay or allowance; and he is to take the following oath before some justice:—

I A. B. *do swear, I had not between the* —— *and the* —— *any place or employment of profit, civil or military, under his majesty, besides my allowance of half-pay as a reduced* —— *in his majesty's army, or navy, or marines,* [as the case may be] *save and except my pay or allowance as a field-officer, captain, lieutenant, ensign, adjutant, paymaster, quarter-master, surgeon, surgeon's-mate, or assistant-surgeon, while assembled for training and exercise,* [as the case may be,] *for serving in the militia of the county of* ——.

The right to Chelsea pensions not to be affected.

§ 17. No adjutant, quarter-master, non-commissioned officer, drummer, or private, entitled to receive any *Chelsea* pensions or allowance, shall forfeit or lose his right thereto, by reason of his serving and receiving pay in the regular militia when assembled for training; nor shall any subaltern, surgeon's-mate, or assistant-surgeon, forfeit or lose his right to such pensions or allowance by reason of his receiving the allowance of 2*s.* 6*d.* or 2*s.* a-day, granted by this act to subalterns, surgeons'-mates, or assistant-surgeon, when disembodied.

Surgeons allowance for medicines.

§ 18. There shall be granted to the surgeon of each regiment when disembodied, a sum in addition to his pay, after the rate of one guinea for every one hundred men, for the necessary medicines for the sick non-commissioned officers, drummers, and privates, during the annual exercise, and also an allowance of 6*d.* *per* month for each of the non-commissioned officers and drummers in constant pay at head-quarters, for the necessary medicines and attendance given to them while the regiment is not called out for annual exercise.

Adjutants after twenty years' service entitled to receive a certain allowance.

§ 19. Every adjutant of regular militia appointed before the 24th *December*, 1814, who shall have served faithfully either in H. M.'s regular forces, or in the regular or local militia for the full term of twenty years in the whole, ten of which he shall have served as an adjutant of regular militia, and who shall by age or infirmity be unfit for further service, shall, on producing to the secretary at war a certificate of such service of twenty years from the commanding officers of the different corps to which he shall have belonged, and upon obtaining an order from the secretary at war, founded upon such certificate, be entitled to receive an allowance at the rate of 8*s.* *per* day; but no person shall be entitled to receive such allowance who shall hold any office or employment of profit, civil or military, under H. M., the annual profits or emoluments of which shall exceed three times the amount of the said allowances of 8*s.* a-day: And every adjutant appointed since the 24th *December*, 1814, and who shall have served as aforesaid for 30 years in the whole, whereof 15 shall have been in service as an adjutant of regular militia, and who shall have been reckoned unfit for further service, shall, upon producing a like certificate of service, be entitled to an allowance at the rate of 6*s.* a-day, subject to the same restrictions as the aforesaid allowance of 8*s.*:

But no such adjutant shall lose his right to any half-pay or out-pension by receiving such allowance. 5 G.4. c.33.

Quarter-masters also. § 20. Quarter-masters of regular militia, after a like service of thirty years, whereof fifteen must have been in the regular militia, and rendered unfit for further service, producing a like certificate, are to be entitled to an allowance at the rate of his pay when serving in the disembodied regular militia, with the same provision as to holding any office and receiving half-pay, or out-pension.

Surgeons also. § 21. If any surgeon of regular militia, having served faithfully in the regulars or militia for the full term of twenty years, be rendered unfit for farther service, he shall, on producing a like certificate of service of twenty years (ten of which must have been as surgeon of militia,) be entitled to an allowance at the rate of 6*s.* *per diem*, with the like provision as to office and half-pay.

Reduced adjutants to be allowed 4s. per day. § 22. In case any regiment shall have already ceased and determined, or been reduced in its establishment, or shall cease and determine, or be reduced in its establishment, during the continuance of this act, the sum of 4*s.* *per diem* shall be paid to such person as has actually served as adjutant to such regiment, from 25th *March*, 1824, or from the time such regiment shall cease and determine, or be reduced in its establishment, as the case may be; with a like provision as to any office or employment, and as to his right to half-pay of the navy, army, marines, or provisional battalion formed from the militia.

Adjutants, &c. entitled to allowances under 39 & 40 G. 3. and 26 G.3. c.107. § 23. & 24. All adjutants and serjeant-majors entitled to receive certain allowances in consequence of reduction, under stat. 39 & 40 G. 3. (which as to adjutants has been augmented to 4*s.* a-day,) shall be entitled thereto during the continuance of this act, to be issued under the direction of the secretary at war. And every such reduced adjutant may receive the same with any full-pay, half-pay, or allowance, which was tenable with such reduced allowance under stats. 26 *G.* 3. *c.* 107., or 39 & 40 *G.* 3., but he is not to be entitled to such allowance during the time he may hold any place of profit, civil or military, under H. M., the amount, profit, and emolument of which shall exceed three times the amount of such reduced allowance.

Pay, &c. how to be issued. § 25. All sums of money granted for the pay, clothing, allowances and contingent expences for the regular militia, when disembodied, shall be issued and paid under the direction of the secretary at war, according to such regulations as have been or shall be established on that head.

Allowances to clerk of general and subdivision meetings. § 26. In every county, where the militia is or shall be raised, allowances shall be paid to the clerk of the general meetings, at the rate of 5*l.* 5*s.* for each meeting, and to the several clerks of the subdivision meetings, at the rate of 1*l.* 1*s.* (*a*) for each meeting, and such further allowance shall be made to such general and subdivision clerks for their expences and trouble in amending the returns of persons returned liable to serve, by taking out the names of all persons who may appeal, and whose appeals or claims of exemption have been allowed, and inserting the names of any

(*a*) Whenever an allowance beyond the five guineas to the clerk of the general meetings, or one guinea to the subdivision clerk, shall be made, the order for those purposes must be confirmed at a general meeting pursuant to the 26th section. *Ed.*

5 G.4. c.33. persons that shall have been omitted, and in numbering the returns and making out the tickets for the ballot, after the rate of 1*l.* 15*s.* for every 1000 names of persons returned liable to serve; and also for the actual expences incurred by such respective clerks, and for printing and stationery used for the purposes of this act, as to the lord-lieutenants or deputy-lieutenants shall appear reasonable; and in case the orders (No. 12.) made by the lieutenants or deputy-lieutenants for the payment of such further allowances shall be confirmed at a general meeting consisting of not less than five deputy-lieutenants, but not otherwise. And the clerks of the general and subdivision meetings shall transmit to the secretary at war the amounts, returns, and orders upon which they claim the aforesaid allowances, in order that he may give the necessary directions for the payment thereof.

Bills drawn for pay.

§ 27. All bills, drafts, and orders, drawn for the pay or allowances of the regular militia when disembodied, may be or shall be drawn upon unstamped paper.

No fee to be taken.

§ 28. No fee or gratuity shall be given or paid for, or upon account of any warrant or sum of money issued under this act.

42 G. 3. c. 90. Chelsea hospital.

By stat. 42 *G.* 3. *c.* 90. § 86. any person being a serjeant on the establishment of *Chelsea Hospital*, at the allowance of 12*d.* a day, or any out-pensioner upon the same establishment at 5*d.* a day, being able and fit to serve, and being appointed to serve in the militia, may receive the said allowance together with his pay from such militia. And any serjeant, corporal, or drummer, who shall have served as such 20 years in the militia, and shall be discharged on account of age or infirmity, shall, on the recommendation of the colonel or other commandant, and of the lieutenant or two or more deputy-lieutenants, or (on the death, removal, or absence of such lieutenant,) on the recommendation of the colonel or other commandant, and three or more deputy-lieutenants, be entitled to examination at the *Chelsea* board, and be capable of being placed on the said establishment, at the pension of 5*d. per diem*, if the said board judge him deserving thereof.

Serjeants, &c. serving twenty years may receive the Chelsea pension.

§ 117. And if any non-commissioned officer or private man of the militia shall be maimed or wounded in actual service, he shall be equally entitled to the benefit of *Chelsea Hospital* with any non-commissioned officer or private man belonging to H. M.'s other forces.

Commission not to vacate a seat in parliament.

§ 172. The acceptance of a commission in the militia shall not vacate the seat of any member returned to serve in parliament. And no officer in the militia shall be compelled to serve the office of sheriff.

Officers exempted from the office of sheriff.

May go to vote at elections.

§ 173. No officer or private man serving in the militia shall be liable to any penalty or punishment for or on account of his absence during the time he shall be going to vote at any election of a member to serve in parliament, or returning from such election.

Exempted from parish offices.

§ 174. No serjeant, corporal, or drummer of the militia, nor any private man, shall, from the time of his enrolment until his discharge, be compelled to serve as a peace officer, or parish officer. Nor to perform any highway duty commonly called *statute work.*

And highway duty.

May set up trades.

§ 175. And every person having served in the militia when drawn out into actual service, *being a married man*, may set up

and exercise any *trade* in any town or place within *G. B.* without any molestation by reason of the exercising such trades: and with and under the same provisions and regulations, and with the like exceptions with respect to the two universities, as any mariner or soldier can do under stat. 24 *G.* 3. *c.*44. And by stats. 42 *G.*3. *c.*69. § 3. and 56 *G.* 3. *c.*67. § 3. the provisions of those acts (for which see page 336.) are extended to all officers and soldiers who have personally served in the militia for the term of 5 years, and have been honourably discharged, with the like exceptions as to the two universities. And no such militia man shall be liable to be removed out of any town or place until he shall become chargeable to the parish. *R.* v. *Gwenop*, 3 *T. R.* 133. 42 G.3. c.90. Are not removable until chargeable.

By stat. 54 *G.* 3. *c.*11. Every serjeant of militia, who shall become entitled to his discharge, by reason of the expiration of any period of service fixed in H. M.'s regulations, in that behalf, or who shall have been discharged as an invalid, or disabled, shall become entitled to such pension, allowance or relief, as shall have been fixed in any orders or regulations made by H. M. in such cases, and for the payment whereof, money shall have been voted by parliament. 54 G. 3. c. 11. Pensions to serjeants of militia.

§ 2. Every serjeant who shall have been discharged by reason of the expiration of any such period of service, or as an invalid or disabled, shall become entitled to an additional pension, which together with the pension he may now receive, shall be equal to the increased pension to which surgeons are entitled under the provisions of this act, or any regulations made in pursuance thereof. Additional pension.

By stat. 55 *G.* 3. *c.*65. § 2. No officer entitled to half-pay, shall forfeit the same during the time he shall serve as captain in the militia, and every such captain shall take the like oath as subalterns in the militia receiving half-pay. 55 G.3. c. 65. Captains of militia not to forfeit half pay.

And by stat. 54 *G.* 3. *c.*11. § 5. All the provisions of stat. 46 *G.* 3. for making better provision for soldiers, shall extend to any rules, and regulations, made for giving any pensions, allowances, or relief under this act. The provisions of stat. 46 *G.* 3. *c.*69. and of a subsequent act (the 47 *G.* 3. *c.* 25.) for the more convenient payment of half-pay, and pensions and other allowances to officers, and widows of officers, and to persons upon the compassionate list, will be found in pages 338 & 339. 54 G. 3. c. 11. Provision of 46 G.3. c.69. to apply to this act.

By stat. 55 *G.* 3. *c.*153. § 25. The provisions of stat. 46 *G.* 3. *c.*92. § 6. 7. & 8. for which refer to page 337. are extended to the militia, while actually employed in H. M.'s service. 55 G. 3. c.153. Privilege of sending and receiving letters.

15. Drawn out into actual Service.

By stat. 42 *G.* 3. *c.*90. § 111. In all cases of actual invasion, or upon imminent danger thereof, and in all cases of rebellion or insurrection, it shall be lawful for H. M., (the occasion being first communicated to parliament, if the parliament shall be then sitting, or declared in council, and notified by proclamation, if no parliament shall be then sitting, or in being,) to order the lieutenants, or (on their death or removal, or absence,) three or more deputy-lieutenants with all convenient speed to draw out and embody all the regiments of militia, within their respective counties, or so many of them or such part and proportion of them as H. M. shall judge necessary, and in such manner as shall be best adapted to the cir- 42 G. 3. c. 90. To be embodied in cases of invasion or rebellion.

42 G.3. c.90. cumstances of the danger, and to put the said forces under the command of such general officers as H. M. shall be pleased to appoint, and to direct the said forces to be led by their respective officers into any parts of *G. B.*, for the repelling and prevention of any invasion, and for the suppression of any rebellion or insurrection within *G. B.*; and from the time of any regiment being so called out and embodied until the same shall be returned to its own county, and disembodied by H. M.'s order, the officers, non-commissioned officers, drummers, and private men shall be subject to all the provisions in any mutiny act then in force, and the articles of war made in pursuance thereof.

Notice to be given for the men to attend.

§ 114. And the lieutenant, or (on his death, removal, or absence,) any three or more deputy-lieutenants to whom any order from H. M. for drawing out and embodying the whole of the militia of such county shall be directed, shall forthwith issue an order (No. 7.) to the chief constables, or other officers of the several hundreds or other divisions within their respective counties, with directions to forward the same immediately to the constables or other officers of the several parishes, and places, and such constables are, upon receipt thereof, forthwith to cause notice in writing to be given to the several militia men, or left at their usual places of abode, within their respective parishes, or places, to attend at the time and place mentioned in such order.

Penalty of not appearing, and of concealing militia men.

§ 116. And if any militia man so ordered to be drawn out (not labouring under any infirmity incapacitating him to serve as a militia man) shall not appear and march in pursuance of such order, every such militia man shall be liable to be apprehended and punished as a deserter according to the provisions of the mutiny act, and of the articles of war; and if any person knowingly shall harbour and conceal any such militia man when ordered so to be drawn out and embodied, he shall for every such offence forfeit and pay 100*l.*

Intitled to the same pay as other infantry. The pay of the militia not to be increased by the increasing of the pay of the regulars.

§ 117. And from the date of H. M.'s warrant for drawing out the militia into actual service, the officers and privates shall be entitled to the same pay as those of other infantry forces. [But by stat. 46 *G.* 3. *c.* 140. the several acts relating to the militia shall not be construed to extend to the increasing of the pay of the militia at any time hereafter if the pay of the regular forces should be increased.]

Pay to commence from the day of joining.

§ 118. Provided, that the pay of every officer, serjeant, corporal, drummer, and private man, who shall not join his regiment, on the day appointed for that purpose, shall commence only from the day of his joining the same, unless he shall have been prevented by sickness or other inevitable necessity, to be proved to the satisfaction of the commanding officer, in which case he may, by order of his commanding officer, be accounted with for his pay from the date of H. M.'s warrant.

§ 119. And the pay of every person enrolled to serve in the militia, after such militia shall have been embodied and called out into actual service, shall commence upon the day on which he shall join the regiment to which he shall belong: provided that it shall be lawful for the deputy-lieutenants or justices by whom he shall have been enrolled, to order and direct an allowance to be made to him, for the purpose of enabling him to proceed and join his regiment, not exceeding the rate of the pay of

so many days as would enable him to march from the place where he was enrolled to the place where the regiment may be stationed, to be calculated at the rate of not less than ten miles *per* day, with the usual number of halting days; and the said allowance of pay shall be advanced to such person at the time of his enrolment by the clerk of the sub-division meeting under the order of the said deputy-lieutenants or justices, or one of them, and shall be repaid to the said clerk by the receiver-general of the land-tax on the production of a certificate to that effect, signed by the said deputy-lieutenants or justices, or one of them, and the said receiver-general shall be allowed for the same in his accounts. **42 G.3. c.90.**

§ 120. And when any regiment shall be drawn out into actual service, and during the time it shall so continue, the commandant thereof shall appoint an agent thereto, and shall take security from him; and such commandant shall be liable to make good all deficiencies that may happen from the said agent or from himself, upon account of the pay, clothing, or public stock of such regiment. **Agent to be appointed.**

§ 121. And when the militia shall be ordered out into actual service, the receiver-general shall pay to the captain or other commanding officer of every company so ordered out, one guinea for the use of every private man belonging to his company, and also one guinea for every recruit as early as may be after such recruit shall have joined his company, while out in actual service; and the money so received by such captain, or so much thereof as he shall think proper, shall be laid out in the manner he shall think most advantageous for the respective men; and he shall on or before the 24th day of the month next ensuing that in which he shall have received such one guinea, account to such men how the said said sum hath been applied, and shall, at the time of settling such account, pay the remainder of the money (if any) to them. **To receive one guinea when ordered out.**

§ 122. And in case any person not possessed of any estate in land, goods, or money, of the clear value of 500*l*. and who shall make oath that he is not so possessed, shall be chosen by ballot to serve in the militia for any parish where the said militia is drawn or ordered out for actual service, and such person shall be approved, sworn, and enrolled as aforesaid, or shall provide a fit person to serve as his substitute, who shall be approved, sworn, and enrolled as aforesaid; the churchwardens or overseers of such parish shall, on receiving an order (No. 8.), under the hands of any two or more deputy-lieutenants acting within the sub-division wherein such parish is situate, pay to such person so chosen any sum not exceeding the sum which such deputy-lieutenants shall adjudge to be as near as may be one half of the current price then paid for a volunteer or substitute in the county where such person was so chosen, which said sum of money shall be taken out of the rate to be made as hereinbefore directed for providing and producing volunteers, or in case no volunteers shall have been provided by the churchwardens or overseers, then out of a rate to be made and collected agreeable to the poor's rate as herein-before also directed. And in case any churchwarden or overseer shall refuse or neglect to pay such money upon demand and production of such order, he shall forfeit 10*l*., one half of which shall be paid to **Balloted men to receive half the price of volunteers, if not worth 500l.** **Penalty for refusing to pay such allowance.**

42 G.3. c.90.

Exception if the man is discharged within one month.

the person so chosen by ballot in lieu or in part of the sum ordered to be paid him as aforesaid: provided that if any man so chosen by ballot and serving for himself shall within one month after his enrolment be disapproved of and discharged by the commanding officer, such sum shall not be paid to the person so chosen by ballot, but shall be paid in manner before mentioned to the next person chosen by ballot in his stead; and if any substitute be disapproved and discharged in manner aforesaid, then no such sum shall be paid to the man so chosen by ballot, unless he shall serve himself, or shall find another substitute who shall be approved by such commanding officer as aforesaid.

[N.B. Although, by the former part of this section, the deputy-lieutenants seem to have a discretionary power to give the order immediately on enrolment, yet from the latter part it seems prudent, if not necessary, to withhold the order for one month after the enrolment, that time being allowed to the commanding officer to disapprove and discharge; especially as a forfeiture is incurred by the churchwarden or overseer on his refusal or neglect to pay the money on demand and producing the order.]

Return to be made of men willing to continue in the service, and for what price.

§ 123. And whenever any regiment of militia shall be embodied, and absent from the county to which it belongs, the commanding officer shall apply to every man chosen by lot whose time shall be within four months of expiring, and who, in his judgment and after an examination by the surgeon, shall still be fit to serve as a militia man, and enquire if he be willing to continue in the service for such term as any man who should be then balloted to serve would be subject to, and for what price he will so continue; and such commanding officer shall, on the first day of the months of *January*, *March*, *May*, *July*, *September*, and *November* respectively, or as soon after as conveniently may be, transmit to the clerk of the general meetings of the county to which his regiment belongs, a list of all such men as he shall find willing to continue, and for what sums; which list shall be signed by every such militia man, and shall be made in the following form:—

Dated the   day of

Name of the county.	Names of the men.	Of the parish of	In the hundred or other division of	Time of service expires on the	Sum for which they engage to serve.	Signature of consent.
	A. B.	*P.*	*H.*			*A. B.*
	E. F.	*Q.*	*I.*			*E. F.*
	G. K.	*R.*	*N.*			*G. K.*

And the signing of the said list shall be binding upon the persons signing the same to all intents and purposes whatsoever.

Extracts of the returns to be

§ 124. And the clerk of the general meetings shall, as soon after the receipt of such notices as the same can be done, transmit to the respective clerks of the subdivision meetings for the use of

the deputy-lieutenants acting therein, correct extracts of such returns, specifying in every such extract the men that shall have been enrolled for the sub-division to which the clerk to whom any such extract is sent shall belong; and thereupon such deputy-lieutenants, if they shall think fit, may cause the men willing to continue to serve as aforesaid to be enrolled as volunteers for the parishes or places for which they shall have been originally enrolled to serve, and in every such case may require the churchwardens or overseers of such parish or place to remit the bounty to be given to such men to the paymaster of the regiment, in which such men shall be then serving, who shall forthwith pay or account to the said men respectively for the same.

42 G.3. c.90. — transmitted to the clerks of subdivisions.

§ 125. And in case the term of service of any person who shall have been chosen by lot and enrolled to serve in the militia, shall be prolonged in the manner herein directed beyond the term of five years, the receiver-general shall pay to the captain or other commanding officer of each company one guinea for every such person; and shall in like manner so often as the term of service of any person so chosen by lot and enrolled to serve in the militia shall be so prolonged, pay the like further sum of one guinea, and the money so received by any captain or commanding officer, or so much thereof as he shall think proper, shall be laid out in the manner he shall think most advantageous for such balloted person; and such captain shall, on or before the 24th day of the month next ensuing that in which he shall have received any such guinea, account for the same, and shall pay over to him the remainder of the said money which shall not have been so disposed of.

Balloted men continuing their service beyond five years to have one guinea.

§ 126. And if the term of service of any substitute, hired man, or volunteer, shall by reason of the militia being embodied continue beyond the term of five years, such receiver-general shall pay the captain or other commanding officer of each company one guinea for every such substitute; and in case such term shall so continue for more than three years beyond the said term of five years, then at the expiration of the said three years the said receiver-general shall pay the like further sum of one guinea for every such person, and shall in like manner, at the expiration of every additional term of three years, pay the like further sum of one guinea for every such person, to be laid out and accounted for as aforesaid.

A like bounty to substitutes or volunteers whose term shall be so prolonged.

§ 127. If any substitute or volunteer (not being incapacitated by any infirmity) shall not with due diligence join his regiment (in case it shall then be embodied) according to such order as shall be given him in that respect by the lieutenant or deputy-lieutenants, or any officer of the regiment, or any person authorised to give such order; or if any substitute or volunteer of embodied militia, or any serjeant, corporal or drummer, shall desert or absent himself from duty, he shall be liable to be apprehended and punished as a deserter, according to the provisions of the mutiny act, and the articles of war made in pursuance of the same; and may by a general court-martial be adjudged to further limited service in the said militia, or to serve in the king's other forces without limitation as to the period or place of such service, as such court-martial shall direct. And in case the Court shall adjudge

Serjeants, &c. not joining the regiment when embodied, to be deemed deserters.

12 G.3. c.90. such militia man to serve in H. M.'s other forces, and such sentence shall be approved by the king, such man shall (by order from the secretary at war or his deputy, if found fit for general service, on examination by a surgeon of H. M.'s other forces) be entered as a private soldier in such regiment as such order shall direct, or for general service. And he shall forthwith be conveyed either to the head quarters of such regiment in which he shall be so entered, or to the head quarters for recruits belonging to the king's regiments on foreign stations, (as the case may require.) And from the time of such man's being so delivered over to be so conveyed, he shall be liable to all the penalties and punishments contained in the mutiny act, as if he had originally been enlisted for general service, or for the regiment or corps in which he shall be so ordered to be entered.

When the number enrolled shall have been ordered out, vacancies may be filled up by ballot.

§ 128. Whenever the whole number of persons enrolled shall have been ordered to be drawn out and embodied as aforesaid, and any shall afterwards make default, either by not appearing in pursuance of any such order as aforesaid or by desertion or absence from duty, and such person shall not be taken within the space of three months from the time of such default, desertion, or absence, then a vacancy shall be declared by the deputy lieutenants at their first meeting to be holden for the subdivision for which such person was enrolled, next after the receipt of the certificate of such default, desertion, or absence, under the hand of the officer commanding the regiment to which such person belonged; and the vacancy thus occasioned shall be forthwith filled up by a fresh ballot.

Proceedings where only part is embodied.

§ 129. After reciting, that it may be expedient, that only such a proportion of the militia, and in such of the counties as shall be specified in any order of H. M., shall be drawn out and embodied in the first instance, and that the appointment of the private men necessary to constitute such proportion, should be decided by ballot or otherwise, as is hereinafter mentioned in each subdivision, without assembling them previously out of the subdivision to which they belong, enacts that the lieutenant of every county, or (in case of vacancy or absence) any three or more deputy-lieutenants to whom any order of H. M. for the purpose of embodying the said militia or such proportion thereof as H. M. shall have judged necessary, shall have been directed, shall, as soon after the receipt thereof as conveniently may be, issue their order to the clerks of the several subdivision meetings to make out a full and true list, containing the names of all persons enrolled to serve within each subdivision, and arranged according to their classes as hereinbefore mentioned, before a day to be specified in the said order, which day shall not be later than three days after the date of such order, and the said clerks shall, within the time fixed by such order, make out such lists accordingly, and also two duplicates thereof, one of which shall be for the use of the subdivision meetings, and the other shall be transmitted to the clerk of the general meetings, for the use of the lieutenant or the deputy lieutenants who shall have issued such order.

Notices to be issued for raising the men.

§ 130. And the said lieutenant or deputy-lieutenants to whom H. M.'s order shall be directed, shall, at the time of issuing their said order, also issue their order for assembling all the men of the

said militia within their respective subdivisions, or at such places, and in such proportions as to them shall appear most expedient, on the day specified in such order, to the chief constable or other officers of the several hundreds, or other divisions, with directions immediately to issue precepts conformable thereto to the constables or other officers of the several parishes and places respectively, who are, upon receipt thereof, forthwith to cause notice in writing to be given to the several men, or left at their usual places of abode, to attend within their respective subdivisions or districts at the time and place mentioned in such order, and shall also cause a like notice thereof to be affixed on the doors of the churches or chapels belonging to their respective parishes, or (if any place have no church or chapel belonging thereto) on the door of the church or chapel of some parish adjoining, which shall be a sufficient notice to every person enrolled by virtue of this act, notwithstanding any omission in the delivery of written notices in manner herein directed; and all such militia men shall duly attend at the time and place appointed in such notices respectively. 42 G. 3. c. 90.

Militia men not appearing when embodied, to be considered as deserters.

§ 131. If any militia man, not labouring under any infirmity incapacitating him for service, shall not appear in pursuance of the orders, or appearing shall not abide the orders of the deputy-lieutenants attending in pursuance hereof, he shall be deemed a deserter; and if not taken previously to the completion of the ballot at which he ought to attend, he shall forfeit 10*l*. and be liable to be embodied.

County-lieutenant, &c. to appoint the first subdivision meeting for balloting for a proportion of the men.

§ 132. And the lieutenant or deputy-lieutenants, or any three or more of them, shall appoint the first meeting to be holden by the several deputy-lieutenants within their respective subdivisions, or at such other place as shall have been appointed on the day mentioned in such order as aforesaid, for assembling the men of the said militia, in order to their being chosen or balloted to serve according to this act, and shall also appoint the time and place of assembling such of the said men as shall be so chosen or balloted, in order to their being embodied: of which several appointments the respective deputy-lieutenants shall have notice; and all the men enrolled on the list of every such subdivision or district, and appearing in pursuance of such order on the day appointed, shall be then mustered by the said deputy-lieutenants, who shall at such meeting proceed as by this act directed, to cause a number of the men so appearing to be chosen or balloted for, equal to such proportion of the complete number that had been or ought to be enrolled, by virtue of this act, on the list of such subdivision, as shall or may be specified in H. M.'s order for drawing out and embodying any proportion of the militia as aforesaid, and to cause the names of all the persons chosen and balloted to be marked on the list of such subdivision, and when the choice and ballot shall be concluded, the deputy-lieutenants shall cause the list of such subdivision to be publicly called; and as the name of each person contained therein shall be read, shall then and there declare whether such person is or is not (as the case may be) chosen or balloted in the manner hereinbefore provided; and the names of all the persons so chosen and balloted shall be returned to the lieutenant, or to the deputy-lieutenants who shall have given such order; and the persons so chosen and balloted shall be embodied;

42 G. 3. c. 90. and the said deputy-lieutenants shall openly declare to the men who have been so chosen or balloted, the time and place of their assembling in order to their being embodied; and every person who shall have been declared to be so chosen or balloted, shall immediately proceed and repair to, and shall duly attend at the time and place so to be appointed and declared, in order to his being embodied accordingly; and every such person as shall be so declared not to have been so chosen or balloted shall be discharged from further attendance.

Deputy-lieutenants may correct classes.

§ 133. Provided, that it shall be lawful for the deputy-lieutenants in their several subdivison meetings, and before they proceed to choose or ballot, as hereinbefore directed, to revise and correct the names of the men contained in such class or classes, according to the several changes or alterations that may have taken place since the last revisal or correction thereof.

Further regulations for balloting, when only part is ordered to be embodied.

§ 134. And whenever H. M. shall think fit to draw out and embody a part only of the militia, the deputy-lieutenants in their several subdivisions shall, before they proceed to choose or ballot for the private men who are to form such part, examine the classes of the descriptions hereinbefore mentioned, entered according to the provisions of this act; and in every case in which the proportion of the militia required to be called out in such subdivision shall equal the number of men contained in such first, or first and second, or other succeeding classes in their order, then the men contained in such class or classes, as the case may be, shall be forthwith chosen without any ballot; and when the proportion shall be less than the number of men contained in such first class, then such proportion shall be balloted for out of such class only, and no other; and when the proportion shall exceed the number of men contained in the first, or first and any succeeding class or classes in the order in which they shall so stand as aforesaid, the deputy-lieutenants shall first choose all the men in such first class, or first and next succeeding class or classes, until such proportion shall be as near as may be completed, and shall then proceed to ballot in manner directed by this act for the remainder of the proportion so required as aforesaid, out of the class immediately following the last class that shall have been wholly taken towards making up such proportion: and the deputy-lieutenants shall proceed in like manner for the supplying of any further proportion, in case any further part should be afterwards ordered by H. M. to be embodied, and shall, during the whole of the time that a proportion only of the militia shall remain embodied, supply all vacancies as they shall arise, in such proportion, out of the classes as they stand in succession, and shall in no case proceed to ballot for the supplying of any vacancy out of any class, until all the men contained in the preceding class or classes who shall be able and fit to join such militia, shall have been chosen for that purpose.

Vacancy to be filled up by a fresh ballot, where militiamen are absent more than three months.

§ 135. And whenever the militia, or any proportion thereof, shall have been ordered to be embodied, in case any of the persons enrolled shall make default, either by not appearing in pursuance of such order, or by desertion or absence from duty, and such person shall not be taken within three months from the time of such default, then a vacancy shall be declared by the deputy-lieutenants at their first subdivision meeting next after the receipt of the cer-

tificate of such default, under the hands of the officer commanding the regiment to which such person belonged; and the vacancy thus occasioned shall be forthwith filled up by a fresh ballot within the subdivision aforesaid. 42 G. 3. c. 90.

§ 136. And if any person enrolled by virtue of this act, and not chosen or balloted as aforesaid, who shall not have any child or children living under the age of 14 years, and who shall not be more than 35 years of age, shall offer himself as a volunteer to be drawn out and embodied in the room of any person so chosen or balloted, it shall be lawful for the deputy-lieutenants at any meeting to accept such volunteer, and he shall serve as if he had himself been so chosen or balloted. Volunteers ma[y] be accepted un[-]der certain restrictions.

§ 137. And every militia man who shall appear and attend at the ballot to be taken as hereinbefore directed, and who shall not be chosen or balloted as aforesaid, shall be entitled to an allowance of 1*s.* *per diem* during the time he shall be necessarily employed from home in going to and continuing at, and returning from the place to be appointed for such ballot, not to exceed three days, to be paid by the clerk of the meeting in which such men shall be enrolled; and on the certificate of the number of men so paid under the hands of such deputy-lieutenants and justices respectively, or where no deputy-lieutenant shall there attend, then of one such justice, the receiver-general shall reimburse to the said clerk the sums so paid, out of the land-tax. Men attendin[g] at the ballot, and not being chosen, shall b[e] paid by the clerk 1s. per diem while fro[m] home.

§ 138. And the respective clerks of the subdivision or other meetings are empowered to draw on the receiver-general for such sums as such deputy-lieutenants and justices, or where no deputy-lieutenant shall attend, as one justice shall, by any order under hand, direct; which sum shall be applied by such clerks for paying the allowances hereinbefore directed to be made; and the receipt of such clerk, together with such order, shall be to the said receiver-general of the land-tax a sufficient discharge. Clerks may draw upon th[e] receivers-gene[-]ral for allowances.

§ 139. And the clerks of each meeting shall, when required by such deputy-lieutenants and justices (or where no deputy-lieutenant shall attend, then by one justice,) make out an account of the sums by him received and paid in pursuance of this act, to be by them examined, allowed, and signed; and such account so examined, allowed, and signed, shall be the proper voucher and acquittal of such clerk for the application and disposal of such money. Clerks to mak[e] out accounts [of] monies receive[d] and paid.

§ 140. But nothing herein contained shall be construed to debar H. M. from ordering the remainder of the said militia or so many of the remainder of any county, as he shall think proper, to be drawn out and embodied whenever the occasion shall require, according to the provisions prescribed by this act. Remainder o[f] the militia to [be] embodied.

§ 141. And whenever H. M. shall think fit to draw out and embody any further proportion of the militia of any county, the lieutenant, or three or more deputy-lieutenants as aforesaid, are required to cause such further proportion to be drawn out and embodied as H. M. shall order; and in so doing the rules hereinbefore prescribed for drawing out and embodying the first proportion thereof shall be observed. Regulations where such fu[r]ther proportio[n] is to be embodied.

§ 142. And if during such time as any part of the militia shall continue embodied, H. M. shall deem it expedient that the militia of any county, or any part which shall not, at such time be While any pa[rt] shall continue embodied, th[e]

42 G. 3. c. 90.

remainder may be trained and exercised.

actually embodied for service, shall be drawn out in order to be mustered, trained, and exercised, for a limited time, instead of being so embodied for service, according to the provisions of this act, it shall be lawful for H. M. to direct the lieutenants or deputy-lieutenants of all or any of the said counties, to cause the said militia not actually embodied, or any part thereof, to be drawn out, for such purpose, in such proportion, and for such time, and at such place as shall be appointed, with the approbation of H. M., by the lieutenant or deputy-lieutenants, in manner as is hereinbefore directed for training and exercising the disembodied militia.

When the whole is embodied, all officers, non-commissioned officers, and drummers, shall join.

§ 143. And whenever the whole of the militia of any county is ordered to be embodied, all the officers, non-commissioned officers, and drummers shall immediately join the same, at the time and place appointed for the embodying such militia; and whenever the militia of any county is called out and embodied by detachments or divisions, under any order of H. M. for that purpose, it shall be lawful for H. M. to order and direct the proportion and description of officers, non-commissioned officers, and drummers, who shall accompany the same, and the respective establishments thereof, and also to regulate the numbers and duties of all such officers, serjeants, corporals, and drummers as shall remain within any such county, for mustering, training, and exercising the remainder of the private militia men thereof, as the service may require, and to H. M. may seem most fit.

The king may disembody and embody the militia as he may think fit.

§ 144. And H. M. may, from time to time, as he shall think fit, disembody any part or proportion of any militia of any county, embodied under this act, and from time to time again draw out and embody any such militia so disembodied or any proportion thereof, as to him shall seem necessary, according to the rules and provisions of this act.

When disembodied to be put upon the same footing as before they were drawn out.

§ 145. When such militia shall be again disembodied and dismissed to return to their several places of abode, they shall be subject to the same orders, directions, and engagements only as they were subject to under the provisions of this act before they were drawn out into actual service.

16. Relief of Militia Men's Families.

Acts repealed by the 43 G. 3. c. 47.

By stat. 43 *G.* 3. *c.* 47. § 1. The statutes 33 *G.* 3. *c.* 8. 34 *G.* 3. *c.* 47. 35 *G.* 3. *c.* 81. and 36 *G.* 3. *c.* 114. for relieving the families of militia men, are respectively repealed; except as to all cases relating to the repayment or reimbursement of any sums of money advanced or paid under any or either of the said acts: and to the allowing, accounting for, or recovering of any such sums of money, or any arrears thereof, which may remain not repaid, reimbursed, allowed, accounted for, or recovered; or to any fines, penalties, or forfeitures relating thereto respectively.

Non-commissioned officers, &c. leaving families.

§ 2. And if any person serving, or enrolled as a non-commissioned officer or drummer, or as a balloted man or substitute, hired man or volunteer respectively [now by stat. 51 *G.* 3. *c.* 20. § 20. confined to balloted men only,] shall, when embodied and called out into actual service, leave a family unable to support themselves, the overseers of the poor of the parish or township where the family of such person shall dwell, shall, by order (No. 9.)

of one justice, pay to such family, out of the poor rates, a weekly allowance, according to the ordinary price of labour in husbandry within the county or place where such family shall dwell, by the following rule; that is to say, any sum not exceeding the price of one day's such labour, nor less than 1*s*. for every child born in wedlock, and under the age of ten years; and for the wife of such militia man, whether he shall or shall not have any child or children, any sum not exceeding the price of one day's such labour, nor less than 1*s*.: and in every parish where the money arising by such rates shall not be sufficient for that purpose, a new rate or rates shall be made for raising a sum sufficient for that purpose. 43 G. 3. c. 47.

[But by stat. 51 *G*.3. *c*.20. § 20. No allowance shall be granted to the wives or families of any men raised after this act, but of such as are balloted.]

§ 3. And it shall be lawful for the justices assembled at any *Michaelmas* general quarter sessions held for any county raising any militia, to settle, ascertain, and regulate the rate of allowance to be paid under this act, to the families of militia men resident within such county; and every such rate of allowance so settled, ascertained and regulated shall be binding upon all justices making any order for the payment of any allowance under this act, until any other or new rate of allowance be settled.

Justices may regulate the rate of allowance.

§ 4. Provided, that no allowance shall be ordered or paid under this act to the wife or family of any militia man, until he shall have joined the regiment to which he belongs, or for any longer period than such person shall continue to serve and remain embodied in actual service, nor in any case in which the wife shall follow the regiment in which her husband shall serve, or shall leave her children, if any, or depart from her home, unless under certificate of any neighbouring justice, or the overseer of the parish in which such relief shall be given, authorising such departure for a time specified therein for the purposes of harvest, or obtaining by work a better support for her family, or unless for the purpose of going to reside, and residing in the parish for which her husband shall serve, in case at the time of her husband being called out into actual service she shall be residing in any other parish.

No allowance to be made to the wife or family of any person till he shall have joined his corps, nor when the wife shall follow the regiment.

[But by stat. 53 *G*.3. *c*. 81. § 1. No wife or family of any person serving in the militia, and entitled by reason thereof to relief, shall forfeit the same by reason of her having followed, or accompanied, or been with her husband with the regiment in which he shall serve, or by reason of her leaving her child or children, or departing from her home; but she shall upon her returning to her home, be entitled from the time of her return, to have such relief as is directed by the laws in that behalf.]

But upon her return home, she is to be entitled to relief.

§ 6. No allowance shall be paid to the family of any non-commissioned officer or drummer reduced for misconduct to the condition of a private, such reduction being certified by the commanding officer or adjutant to the clerk of the general meetings, and by him to the treasurer of the county, in the militia of which such person shall serve, and by such treasurer to the overseers of the poor of the parish in which such family shall dwell; and every such allowance shall cease from the time of such reduc-

Nor to the family of any non-commissioned officer or drummer reduced for misconduct.

48 G.3. c. 47.

tion being so certified to the overseers as aforesaid, and be no longer payable, notwithstanding any order of any justice to the contrary; and every such family requiring relief, shall, from and after that time, be relieved as casual poor only.

Families not to be sent to any workhouse, &c.

§ 8. The families of non-commissioned officers, drummers, or balloted men, shall not be removeable or sent to any workhouse or poorhouse by reason of receiving any such allowances; nor shall any persons, to whose families any such allowances shall be paid, be thereby deprived of their legal settlements elsewhere, or of their right of voting for the election of members to serve in parliament.

Allowances to non-commissioned officers and drummers to be repaid the overseers of the poor by the county treasurer.

§ 9. And every such weekly allowance to the family of any non-commissioned officer or drummer shall be repaid to the overseer of the poor where such family was relieved, by the treasurer of the county, in which the parish is situated, out of the public stock thereof; and every weekly allowance which shall be so paid in any other county than that for which such non-commissioned officer or drummer shall serve, or to the family of any private in any other parish than the one for which he shall serve, shall respectively be reimbursed, in the manner hereinafter mentioned.

Relief to families of non-commissioned officers and drummers to be apportioned.

§ 10. Where a certain number of private men are directed to be raised for any county, together with or including any city, borough, town, or place in *England*, being a county or district of itself not contributing to the general county rate, the several sums of money raised for the relief of the families of non-commissioned officers and drummers respectively, shall be divided and apportioned between such county or place, in such proportions as the respective numbers apportioned to be raised by such county or place respectively bear to each other.

Treasurers to demand and pay such proportions to one another.

§ 11. And the treasurers of any such county, city, and place respectively, are authorised to demand, receive, and make payment of such proportions and sums of money, the one to the other of them, as the case may require.

Disputes to be settled by the lord-lieutenant or three deputy-lieutenants.

§ 12. And if any dispute shall arise as to the proportion to be paid, or any other matter relating thereto, or to such payments, the lord-lieutenant of the said county at large, and in his absence, three deputy-lieutenants at any meeting called, shall adjust the same, whose decision shall be final; and the said lord-lieutenant and deputy-lieutenants are respectively authorised to call for and inspect the accounts of every such treasurer, for the purpose of adjusting their said proportion.

Justices may appoint treasurers, where there are none.

§ 13. And in all such cities and places which do not contribute to the general county rates, and where no treasurer is yet appointed, the justices, in case there are any, and if not, then the justices of the county wherein such city and place shall be, shall at their general quarter sessions appoint a treasurer; and from time to time assess upon every parish, tything, township, hamlet, and vill within the liberties of such cities and places in such proportions as the poor-rates have usually been assessed, and shall cause to be paid out of such poor-rates to such treasurer, such sums as shall be necessary for the purposes of this act: and such treasurer shall dispose of the same accordingly, and shall act in the same manner as the treasurers of peculiar districts where a public stock is now raised.

§ 14. And in every case where any allowance shall be paid to the family of any private in any other parish than that for which he shall serve, it shall be lawful for the justice who shall make any order (No. 10.) for the relief of such family, to certify the same under his hand, and in such certificate to direct the overseers of the parish for which such private shall serve to reimburse the money so paid to the overseers who shall have advanced the same in pursuance of such order.

43 G. 3. c. 47.

Militia-man's family residing in a different county than that for which he serves.

§ 15. Provided, that where by reason of the distance of any parish in which any such allowance shall be so paid to the family of any private, from the parish for which he shall be serving, if it shall be situate in any other county, the overseers of the poor entitled to the repayment of such allowances under any such order (No. 11.) and certificate as aforesaid, cannot conveniently procure the repayment thereof from the overseers of the poor of the parish, for which such private shall have served or be serving, it shall be lawful for such overseers to demand repayment of such allowances from the treasurer of the county in which the parish, where such allowances shall have been paid, shall be situate; and every such treasurer shall, upon production of such order and certificate as aforesaid, forthwith reimburse such allowances to the overseers demanding the same.

Allowances to be demanded from the treasurer.

§ 16. Every treasurer who shall reimburse to any overseers any such sums shall deliver an account thereof, signed by one justice for the county where such militia man's family shall dwell, to the treasurer of the county, in the militia whereof he shall serve, who thereupon shall pay to the treasurer who shall have so delivered such account, the sums so by him reimbursed to such overseers, and shall be allowed the same in his accounts.

§ 17. And every treasurer who shall repay to any treasurer of any other county, such allowances as aforesaid, on such signed account as aforesaid, shall transmit the same, and also an account of all monies so repaid by him in pursuance thereof to the justices for the county, at the next or general quarter sessions or any subsequent sessions; which accounts so received shall be allowed by the justices at such sessions, who shall forthwith make orders for the overseers of the poor of the respective parishes for which such privates shall respectively serve or have served, to pay the same to the treasurer of such county out of the poor-rates, within fourteen days next after the receipt of such orders.

Account of allowances to be transmitted to the justices.

§ 18. Provided, that within the city and county of the city of *Exeter*, all allowances to families shall be paid by the treasurer of the corporation of the governor, deputy-governor, assistants, and guardians of the poor of the city and county of *Exeter;* and the same shall be ascertained, assessed, and levied by the same ways and means as the poor-rate within the said city and county is, by virtue of the several acts of parliament now in force for the relief of the poor within the said city and county, directed to be raised.

In Exeter the allowances how to be paid.

§ 19. And all monies to be levied by parish-rates within the city and county of the city of *Bristol*, in relation to this act, shall be paid, collected, and repaid as other money for the relief of the poor there, by virtue of an act of parliament relating thereto.

In Bristol.

§ 20. Provided also, that within the borough of *Plymouth*, all allowances to such families shall be paid by the treasurer of the

In Plymouth.

43 G. 3. c. 47. corporation of the governor, deputy-governor, assistants, and guardians of the poor of the said borough of *Plymouth*; and the same shall be ascertained, raised, and levied in the same manner as the money raised for the relief of the poor within the said borough is, by virtue of the several acts of parliament now in force relating thereto, directed to be raised.

Accounts of allowances to be reimbursed under this act, shall be signed by the justices.

§ 21. Provided, that accounts of all allowances paid under this act, in respect whereof any reimbursement shall be directed, shall be made up at the end of every successive six months, or shorter period, from the time of the first commencing the payment thereof, and shall be signed by the justices granting certificates for the reimbursement thereof, or by some other justices of the same county or place, within one month after the respective periods up to which such accounts shall be made up; and the money due on such accounts shall, as soon as the same can be done, be demanded of the overseers of the poor of the parish or place, or treasurers, required to make such reimbursement as aforesaid: and no such sum of money shall be demandable, unless the same shall have been so first certified within one month as aforesaid, and delivered to such overseer or treasurer by whom such reimbursement is to be paid, within three months after such certifying thereof.

Militia-men leaving families that become chargeable.

§ 22. And in every case in which the family of any private when called out and embodied for actual service, shall become chargeable in respect of any greater number than the wife and three children respectively under the ages of ten years, it shall be lawful for the overseers of the parish or place for which such man shall serve, or in which the family of such man shall reside, to provide another fit and able man between the ages of eighteen and thirty-five years, and having no wife, or any child under the age of ten years, to serve in the stead of the man having such family as aforesaid; and the commanding officer, upon such other man being duly examined, approved of, enrolled, and joining at the head quarters of the regiment, may and shall discharge the man in whose stead such other person shall be so produced and enrolled: provided that the pay of every such person so provided as aforesaid shall commence and be drawn only from the day of the discharge of the man in whose stead he shall have been provided: and no such private shall be discharged at any other period of the year than between the 1st day of *November* and the the 25th day of *March*.

Payments made by overseers shall be allowed as other expenses on account of the militia.

§ 23. And all payments made by any overseer in pursuance of any order or certificate of any justice under this act shall be allowed and passed in their respective accounts, in like manner as other expenses incurred on account of the militia are now by law passed and allowed; and if any overseer shall, on demand made in pursuance of any order or certificate of any justice for the payment of any money by virtue of this act, and production of such order or certificate to him, refuse or neglect to pay and satisfy the money so directed to be paid, he shall forfeit the sum of *5l.* to be recovered upon the oath of one witness, or by the confession of the party accused, before the justice making such order, or any other justice of the county or place where the offence shall be committed; which said justice is hereby required, upon any information exhibited or complaint made in that behalf,

to summon the party accused, and to examine into the matter of fact, and upon due proof thereof as aforesaid to give judgment for such penalty, to be levied by distress and sale in case the same shall not be forthwith paid, by warrant under the hand and seal of such justice, causing the overplus (if any), after deducting the charges of such distress and sale, to be rendered to the party; and one moiety shall be paid to the informer, and the other to the poor of the parish, to the overseers of which any such sum of money ought to have been paid. 43 G.3. c.47.

§ 24. And all the provisions in this act relating to the allowances to the families of any persons serving in the militia for any parish or township, or any united parishes or townships, and for the reimbursement of all sums of money which shall be advanced under any of the provisions of this act, shall extend to all hamlets, vills, and places having separate overseers of the poor, and maintaining the poor thereof separately and distinctly, and also to all parishes and places united for the purposes of balloting for militia men, as well as to all other parishes, and places; and the justices who shall make orders for the relief of any such families, or any other justice of the same county, shall give directions for the reimbursement of the money to be advanced for such purpose by the overseers of the parish or place, or united parishes or places respectively, which ought to reimburse the same, or to contribute to the reimbursement thereof; and the treasurers and justices of the several counties within which every such parish and place respectively shall be, shall make reimbursement, and direct reimbursement to be made by such parishes respectively, in the same manner as by this act is provided with respect to parishes and townships therein described; and where any man shall serve for any united parishes or places, or for any parish or place comprising more than one township or place which shall have separate and distinct overseers of the poor, such justices as aforesaid shall ascertain in what proportions such united parishes or places, or such several townships or places comprised within the same parish or place (for which any such man, whose family shall be so relieved, shall serve,) ought to contribute to such relief, such proportions to be ascertained according to the numbers of men liable to be balloted for the militia which each of such united parishes or places, or each of such townships or places, as the case may be, shall appear to have had by the last returns made for that purpose; and shall make orders for the reimbursement of such advances, in such several proportions so to be ascertained, and from time to time as occasion shall require; and in order to enable such justices to ascertain such proportions, the clerks of the several subdivision meetings shall, when thereunto required, certify by writing under their hands, the number of men so liable to be balloted for, according to the returns made for each of such parishes or places, for which certificate there shall be paid a fee of 1*s*. and no more.

Act to extend to all places having separate overseers, and to places united for the purpose of balloting for men.

Justices shall ascertain what proportions shall be contributed.

§ 25. And the adjutant of every regiment, or where there shall be no adjutant, the serjeant-major thereof shall, within seven days after the 24th day of every month, during the time of the militia to which he shall belong remaining embodied or in actual service, return to the respective clerks of the subdivision meetings a particular list of all promotions and vacancies, and all deaths, de-

Adjutants, &c. to make monthly returns to the clerks of the subdivision meetings of certain particulars.

43 G.3. c.47. sertions, and other casualties that shall have occurred among the privates in the calendar month preceding each such 24th day as aforesaid; and shall specify the christian and surname of each man so returned, and whether balloted man, substitute, hired man, or volunteer, and the parish or place for which he was serving; and such respective clerks of the subdivision meetings shall, within fourteen days after the receipt of such return, transmit proper extracts thereof to the respective overseers of the parishes or places for which any such man shall have been serving.

Appeal. § 26. If any person shall find himself aggrieved by any order of any justice or justices for the payment of any money as aforesaid, he may appeal to the justices at the next sessions, who are empowered to hear and finally determine the same; and it shall be lawful for the said justices, at such sessions, to award and order, where they shall see occasion, the payment of such sum which such appellant, as churchwarden or overseer of the poor, ought to have paid in pursuance of such order.

Recompence may be made to the treasurers. § 27. Quarter sessions may order such recompence as they shall think just and reasonable, to be made to the respective treasurers for their extraordinary trouble, labour, and expences in the execution of their respective offices while the militia is embodied and in actual service, for such time and in such manner as they shall think proper, to be paid out of the county stock.

51 G.3. c.118. Stat. 51 *G.* 3. *c.* 118. § 5. which authorized the interchange of the militia of *G. B.* and *Ireland*, extends to them the several provisions of stats. 43 *G.* 3. *c.* 47., 49 *G.* 3. *c.* 90., and 49 *G.* 3. *c.* 86., relative to the granting relief to the families of militia-men.

53 G. 3. c 81. For the recovery of sums paid by treasurers. By stat. 53 *G.* 3. *c.* 81. § 10. Where an account of sums paid by the treasurer of any county on account of men serving for any other county, shall have been transmitted to such respective treasurers duly certified, and no legal objection shall have been made thereto within three months from the receipt thereof, the same shall be considered as correct and conclusive, and the treasurer to whom such account shall have been transmitted, shall be liable to pay the full amount thereof to the treasurer from whom he received it, and in case of neglect to do so for two months from the expiration of such first-mentioned period of three months, is to be subject to the penalty of 50*l.*

(17.) Courts-Martial.

42 G.3. c. 90. Adjutants, serjeants, &c. to be subject to the mutiny act. By stat. 42 *G.* 3. *c.* 90. § 103. Every *adjutant*, *serjeant-major*, *serjeant*, *corporal*, *drum-major*, and *drummer* of the militia, shall be subject to the mutiny acts and to the articles of war, under the command of the colonel or commanding officer, who may direct courts-martial to be held as hereinafter directed, for the trial of any such non-commissioned officer and drummer, for any offence committed during the time the regiment was not embodied; and for the trial of any such non-commissioned officer, drum-major, drummer, or private who shall have deserted, while the said regiment was embodied, and shall not have been apprehended till after it shall have been disembodied, but so that no punishment shall extend to life or limb.

By § 104. And if a sufficient number of officers to form a court-martial cannot be found, it shall be lawful for the commandant, and in his absence, for the senior field-officer of the regiment, to order any officers of the militia of the county to which such regiment shall belong, actually resident within the town where such non-commissioned officer, drum-major, or drummer is to be tried, or within ten miles thereof, to attend and assist as members of such court-martial, who shall thereupon attend at the time required and assist accordingly: but no officer shall be entitled to receive pay for any such attendance: provided that no sentence of any court-martial held as aforesaid on any such non-commissioned officer, or drummer, or private man as aforesaid, shall be put in execution until confirmed by the colonel or other commandant, or by the field-officer by whose order such court-martial was assembled.

42 G. 3. c. 90.

Courts-martial how to be held.

Sentence not to be put in execution until confirmed.

§ 105. Any serjeant, corporal, or drummer of the militia may, by sentence of a court-martial, be reduced to the condition of a private, to serve as such during any time not exceeding fifteen months, in case the regiment to which he belongs shall not be then embodied or called out into actual service; and in case it shall be then embodied or called out into actual service, to serve as aforesaid, until they are disembodied, when he shall be discharged, if not re-appointed.

Non-commissioned officers and drummers may be reduced.

§ 115. No officer serving in the militia shall sit in any court-martial upon the trial of any officer or soldier serving in any of H. M.'s other forces, nor shall any officer serving in any of H. M.'s other forces sit in any court-martial upon the trial of any officer or private man serving in the militia.

Militia officers not to sit on the trial of officers of the other forces.

By stat. 55 *G*. 3. *c*. 65. § 4. Where a sufficient number of officers cannot be found within the town where any non-commissioned officer, drum-major, or drummer of the militia, while disembodied, is to be tried by any court-martial, or within ten miles thereof, it shall be lawful for the commandant or senior field-officer, as the case may be, to order any such number of other officers of the militia of the county to which the regiment shall belong, residing beyond such ten miles, as may be necessary to complete the court-martial, to attend and assist as members of the court, who shall be entitled to pay during such attendance, and to 1*s*. 6*d*. for every mile for going to such court-martial at the commencement thereof, and returning after the conclusion of the proceedings.

55 G. 3. c. 65.

Provision in case a sufficient number of officers cannot be found in the place where any non-commissioned officer is to be tried.

By stat. 55 *G*. 3. *c*. 168. § 1. & 2. (the provisions of which, in relation to courts-martial, are by stat. 56 *G*. 3. *c*. 64. § 4. extended to the trial and punishment of officers, non-commissioned officers, drummers, or private men, remaining on permanent duty while the militia shall be disembodied,) every officer, drummer, and private of the militia who shall, during the period of training and exercise, or being embodied, have been guilty of any offence against the mutiny act or the articles of war, may be tried by any general or regimental court-martial, consisting of militia officers, and, if found guilty, punished, although the regiment to which he may belong shall have been dismissed after training and exercise, or shall have been disembodied, in like manner as he may be tried and punished during the period of training and exercise or being embodied. But no such trial shall take place unless the charges

55 G. 3. c. 168.

Offences committed during training and exercise or embodying of the militia may be tried afterwards.

55 G. 3. c. 168. against such officer or private shall have been made out and delivered within six months after the regiment shall have been dismissed or disembodied.

General courts-martial may be appointed as if militia were embodied.

§ 3. Whenever it shall be necessary that a general court-martial shall be held for any such trial, the lieutenants of counties, upon H. M.'s pleasure for that purpose being signified to them, are to give orders to such number of officers of their respective counties to assemble to form such court, and such of them as shall refuse or neglect to attend shall be liable to be tried by a general court-martial, to be assembled according to the regulations of this act, for such disobedience of orders; and all officers attending to form such courts shall be entitled to pay during such attendance, and to 2*s*. for every mile for going to and returning from such court-martial, which shall be held in the same manner as if the militia were drawn out and embodied.

Regimental courts-martial may be appointed.

§ 4. The colonel of the regiment may appoint any place he shall think proper within the county to which his regiment shall belong, for holding a regimental court-martial in any of the said cases for which the same shall be proper, and to order any officers of his regiment to attend, who in default of attendance are to be liable to be tried as above mentioned, and the members of such court-martial are to be entitled to the same pay and allowances as the members of a general court-martial.

Deserters may be tried whenever apprehended.

By stat. 56 *G*. 3. *c*.64. § 5. All non-commissioned officers, drummers, and private men, who may have deserted from the militia, are made liable to be tried and punished wherever they shall be apprehended, although no charges shall have been made out or delivered, according to the provisions of stat. 55 *G*. 3. *c*.168.

(18.) Proceedings where Militia shall not be raised annually.

42 G. 3. c. 90. County-lieutenants, &c. to transmit annual returns of the militia.

By stat. 42 *G*. 3. *c*.90. § 157. The lieutenant, or any three deputy-lieutenants, where the militia shall be raised pursuant to this act, shall annually, on or before the 25th *December*, transmit a certificate to the clerk of the peace, containing an account of the names, number, and rank of the officers, and the number of non-commissioned officers, drummers, and privates of the militia of that year, and the time during which such militia hath been exercised and trained. Which certificate such clerk of the peace shall deliver to the justices at their general quarter sessions to be held next after the 25th of *December* yearly, on the day on which such session shall be opened, and the same shall be filed amongst the records of such session; but where no such certificate shall be received, he shall certify the same under his hand and seal to the justices so assembled, and such certificate of the said clerk of the peace shall be filed in like manner.

Where no such returns are received, the same shall be certified by the clerk of the peace.

§ 158. And where the quota of any county shall not be raised and completed within six months after the passing of this act, or after the same shall have been fixed and established by any subsequent order of H. M. in council, as hereinbefore directed, then and in every such case the sum of 10*l*. shall be annually paid in lieu of every private militia-man who shall not have been raised within the time limited by this act; and the justices assembled at the general or quarter sessions to be held next after the expir-

Counties not raising their quotas to pay 10l. per man.

ation of the said six months shall, upon the receipt of the certificate of the lieutenant, or three deputy-lieutenants, rate and assess the said sum of 10*l.* *per* man as aforesaid, upon every such county, and in case at any future time the number of militia-men required for any county, according to this act, shall not be provided within three calendar months after the lieutenant, or any one of the three deputy-lieutenants shall have had notice from or by the order of the commanding officer of any such deficiency, in every such case the justices, at the next general or quarter sessions after such deficiency shall have been made known, shall rate and assess the like sum of 10*l.* for every man so deficient as aforesaid, upon every county. 42 G. 3. c. 90.

§ 159. The justices aforesaid, in making any such rate and assessment upon the whole of any county, shall apportion the sums, and rate and assess the same upon the several parishes in such county, in the same proportions in which the men for the militia are required to be raised by such parishes respectively according to such appointment as may have been made thereof in pursuance of this act, or to the last apportionment that shall have been made of men to be raised by each parish. Assessments how to be made.

§ 160. And when in any county, such deficiency of men shall arise from the default of any particular parish in not raising their respective proportions of men, the said justices shall rate and assess all such sums upon such parishes that shall have so made default, in proportion to the number of men by which each shall fall short of the number of men required to be raised therein. If the deficiency arise in any particular parish, the assessment to be made thereon.

§ 161. And the justices shall immediately after the making of any such rate and assessment transmit the several amounts of the sums so assessed upon the several parishes to the treasurer of such county, who shall, as soon as conveniently may be, cause notice thereof to be given to the respective overseers of the several parishes upon which any such rate or assessment shall have been made; and such overseers shall, within fourteen days after such notice, pay the amount of the rate or assessment so made, out of the poor's rate, and if they have not sufficient money in their hands they shall make a special rate for the purpose, to be levied and collected as the poor rates; or any other rates made for the purposes of this act. Justices to transmit the amount of the sums assessed to the county treasurer,

§ 162. And the treasurer receiving any such money shall retain it in his hands for three calendar months after the receipt thereof, and during that period it shall be lawful for any deputy-lieutenant of the sub-division within which such parish, shall be situate, to raise any volunteers for such militia, in lieu of such men as shall be so deficient, and to agree with every such volunteer for a bounty not exceeding the sum of 10*l.*; and the deputy-lieutenant before whom any such volunteer shall be duly examined, approved, sworn, and enrolled to serve, shall make an order upon such treasurer for the payment of such bounty, and upon the production to such treasurer of a certificate under the hands of such deputy-lieutenants as aforesaid, of any such volunteer having been duly examined, approved, sworn, and enrolled to serve, and of such order for the payment of such bounty as aforesaid, and of a certificate under the hand of the commanding officer of such man having joined his regiment, such treasurer shall pay out of such money in his hands any sum not exceeding 10*l.*; who shall pay thereout bounties to any volunteers that the deputy-lieutenants shall raise.

42 G.3. c.90. and shall, at the expiration of three months after the receipt of such money as aforesaid, pay all sums as may have come into his hands on account of any such fines as aforesaid, and as shall not have been paid for and on account of any such volunteer, to the receiver-general of such county, to be applied and disposed of in like manner as directed by this act.

Where there are no county rates, the assessments may be rated as the poor rates.

§ 163. In all cases where the militia shall not be raised within any city, town, or place, not rated to the county rate, the proportion of the said sum of 10*l.* *per* man, to be borne thereby shall be raised, levied, and collected within the same, by a separate rate or assessment, by the overseers, and by such ways and means as the poor rates; and such overseers shall from time to time pay over the same to the treasurer of the county, with which such city, town, or place, shall be joined for the purpose of raising the militia.

Where a town lies in two counties.

§ 164. Where any town lies in two counties or ridings, or part thereof in a county, and part in a riding, the proportion of the said money to be paid for such town, in lieu of raising the militia as aforesaid, shall be paid to the treasurer of the county or riding wherein the church of such town is situate.

Provision in case of non-payment of rate by places not assessed to the county rate.

§ 165. And if any sum of money which ought to be paid by any city, town, or place, not rated to the county rate, shall not be paid to the treasurer thereof before the first day of *June* in every year, the justices of the peace for such county, shall, at their next *Midsummer* quarter sessions (by their warrant, directed to any constable of every such parish,) cause the sum due from such parish under this act, by reason of the men not being raised, to be levied by distress and sale of the goods and chattels of the respective overseers of every such parish, rendering the overplus (if any) to the owners, after such money and the reasonable charges attending such distress and sale shall be fully satisfied; and all such overseers shall be reimbursed the money so levied, by the same ways and means as overseers are reimbursed the money expended for the relief of the poor, and may make a rate for that purpose if necessary.

When the assessment upon any place is paid to the receiver-general, it shall be indemnified for not raising its quota that year.

§ 166. And every receiver-general, to whom any such money shall be paid, shall give a receipt to the person paying the same, which receipt shall be a sufficient discharge for such payment; and when the whole sum directed to be raised in any county shall be paid to the receiver-general, such payment shall be a full discharge and indemnification to such county, for the failure or neglect in raising and training the number of men of the militia for the year in respect whereof such payment shall be made; and every such receiver-general shall, within ten days after the receipt of any such money, certify such receipt to the commissioners of H. M.'s treasury, and forthwith pay the same into the receipt of H. M.'s exchequer at *Westminster;* and the money so paid into the exchequer shall be kept separate and apart from all other money, and shall be accounted for yearly to parliament, and disposed of as parliament shall direct; and no fee or gratuity whatsoever shall be given or paid to any officer of the exchequer for or on account of receiving or issuing any such money.

The treasury may allow the receiver-general a reward for his trouble.

And the commissioners of the treasury are authorised to allow to the receiver-general such salary or reward for receiving and paying in such money, as they

shall think proper, not exceeding 2*d*. in the pound for so much money as he shall pay into the exchequer. 42 G. 3. c. 90.

§ 167. The treasurer of every county shall be allowed for his trouble 1*d*. in the pound, upon the whole sum so by him received and paid; which he is authorised to detain out of the money so received, before payment made to the receiver-general; and every high constable, petty constable, churchwarden, and overseer, shall respectively be allowed and paid by such treasurer, 1*d*. in the pound of all such money, in the raising and collecting whereof they shall respectively act; and such treasurer is required to deduct the same out of the money so received by him, and to pay the respective proportions thereof to such high constables or other officers.

County treasurer may detain 1d. in the pound of the money he receives, and shall make a like allowance to high constables, &c.

§ 168. And the clerk of the peace for every county, shall, within fourteen days after the general quarter sessions held next after the 25th day of *December* yearly, transmit to the commissioners of the treasury, and also to the receiver-general for such county, a copy signed by such clerk of the peace, of every certificate which he shall have received from the lieutenant, or any three deputy-lieutenants; and where such certificate shall be omitted to be delivered, the clerk of the peace shall certify such omission to the treasury, and also to the receiver-general, and that such clerk of the peace hath certified the same to the justices at such general quarter session, *and required such justices to proceed according to the directions of this act* (*a*); and such clerk of the peace shall also certify what proceedings have been had at such general quarter sessions in relation to the assessing and raising of the said money where the militia shall not have been raised; and in case such justices shall omit, neglect, or refuse to proceed to raise the said money according to the directions of this act, then the clerk of the peace of such county shall, within fourteen days next after such general quarter session of the peace, certify to the solicitor of the treasury such omission, neglect, or refusal, and the names of the justices who shall be present at such session; and the solicitor of the treasury is hereby required, on receipt of such certificate, forthwith to proceed by all such legal ways and means as shall be most effectual and expeditious to compel such justices to cause the said money to be raised, collected, and paid.

Copies of returns to be transmitted to the treasury.

§ 169. And if the said sum of 10*l*. *per* man to be raised and paid in any such county, shall not be levied, collected, and paid into the exchequer in manner before directed, the solicitor of the treasury is required forthwith upon knowledge or information thereof to proceed by all such legal ways and means as shall be most effectual and expeditious, to compel the levying and collecting of such money and the payment thereof into the exchequer.

If 10l. per man be not raised in any place, and paid into the exchequer, the solicitor of the treasury to compel its being done.

§ 170. And any clerk of the peace who shall refuse or wilfully neglect to receive, deliver, file, make, record, or transmit any such certificates as aforesaid, shall for every such offence forfeit and pay 100*l*., and shall also forfeit his office and be rendered incapable of holding any office civil or military, under the crown;

Penalty on clerks of the peace, receivers, treasurers, constables, &c. for neglect of duty.

(*a*) The preceding direction to the clerk of the peace is confined to certifying the omission. — *Ed.*

42 G. 3. c. 90. and any receiver-general, treasurer, chief constable, petty constable, or other officer who shall wilfully omit or neglect or refuse to act or assist in raising and collecting the said money shall for every such offence forfeit and pay the sums following, viz. every such receiver-general or treasurer the sum of 200*l.*, every such chief constable 50*l.*, and every such petty constable and other officer the sum of 20*l.* And the solicitor of the treasury shall, with all due diligence, prosecute with effect all such justices of the peace, receivers-general, treasurers, and other officers, who shall omit, neglect, or refuse to perform the duty required of them respectively by this act, touching the raising, collecting, and paying of the said money; and in case he shall wilfully omit or delay so to proceed, he shall for every such offence forfeit 500*l.*

Solicitor of the treasury to prosecute.

(19.) Recovery and Application of Penalties.

General levying of forfeitures.

§ 176. All fines, penalties, and forfeitures, by this act imposed exceeding 20*l.* shall be recovered by action of debt, plaint, or information in the courts of record at *Westminster*, or of the great session in *Wales*, or of the counties palatine; if not exceeding 20*l.* shall upon proof on oath before one justice be levied by distress, and for want of sufficient distress such justice shall (in all cases where no particular time of commitment is hereinbefore directed) commit such offender to the common gaol for any time not exceeding three months. And the money arising from such fines, if not otherwise directed, shall be paid to the clerk, or (where there is no clerk) to the commanding officer of the regiment, and shall be part of the public stock.

Application thereof.

Jurisdiction.

§ 152. The several towns and places in the act mentioned, and deemed to be situate within, and part of the several counties, ridings, and places, for the purposes of this act, shall be subject to the jurisdiction and authority of the lieutenants, deputy-lieutenants, justices, and other officers of the respective counties, ridings, and places within which they are hereby deemed to be situate.

Certiorari.

§ 177. No order or conviction by virtue of this act shall be removed by certiorari, nor execution or other proceedings upon such order be superseded thereby.

Treble costs.

§ 178. If any suit be commenced against any person for any thing done in pursuance of this act, the action shall be laid in the county where the cause of complaint arose within six months, and not afterwards; and the defendant may plead the general issue, and if he prevail shall have treble costs.

52 G. 3. c. 105.

By stat. 52 *G.* 3. *c.*105. reciting stats. 48 *G.* 3. *c.*107., 37 *G.* 3. *c.*4., 42 *G.* 3. *c.*90., 42 *G.* 3. c.91., 43 *G.* 3. *c.*50., 43 *G.* 3. *c.*82., 44 *G.* 3. c.56., 47 *G.* 3. *sess.* 2. *c.*71., 49 *G.* 3. *c.*53., 50 *G.* 3. *c.*24., 51 *G.* 3. *c.*20., it is enacted, that the secretary at war may require from any clerk of general or subdivision meetings, or from any person who shall have acted or may hereafter act as clerk of general or subdivision meetings, in the execution of any of the said recited acts, or any other acts relating to the defence of the realm, or the regular or local militia, or from their representatives, and also from any persons who may have had or shall now have, or shall hereafter have in his or their hands any fines or moieties of fines paid under any of the said recited acts, or any monies arising

The secretary at war or any person specially authorised by him, empowered to call for returns of sums received by clerks of general or subdivision meetings,

52 G. 3. c.105.

from any half parts or residues of any sums of money paid by or on account of any persons balloted to serve in the militia or additional force for the engaging of any substitutes or volunteers to be enrolled in their stead, or from any parishes or places as penalties for not having contributed their quotas of men as prescribed by the said recited acts or any other acts as aforesaid, or from any person or persons to whom any such fines, moieties of fines or penalties, half parts or residues shall have been or may hereafter be transferred or paid, or any other fines, bounties, or sums of money under any acts of parliament relating to the regular or local militia, such returns of all monies arising from such fines, penalties, half parts or residues of any such sums of money received by any such clerks or other persons, or fines, bounties, and sums of money aforesaid, and all matters and particulars relating thereto; and that all such returns shall be made out in such form, and shall contain such particulars, as shall be directed by the secretary at war in that respect. *and other persons, with such particulars as he shall direct.*

§ 2. Every such clerk or other person so called upon, and wilfully refusing or neglecting so to do for ten days after receiving any requisition for that purpose from the secretary at war, or wilfully inserting in any such return any false statement of any matter required by the secretary at war, under the authority of this act, to be stated therein, shall forfeit for every such offence 100*l*. *Penalty on clerks, &c. neglecting to make returns, or making false returns.*

§ 3. The secretary at war may make an order upon such clerk or other person as aforesaid, to pay over any such sum of money as aforesaid to the agent-general of the militia and defence acts, or to his separate account, at the bank of *England;* and every such clerk, or other person as aforesaid, having any such money in his hands, and wilfully neglecting or refusing to pay over the same according to any such order, within ten days after the receipt thereof, shall forfeit for every such neglect or refusal 100*l*.; and double the amount of the money remaining in his hands at the time of such order being made as aforesaid. *Secretary at war to make order for payment over of any monies appearing by the returns to be in the hands of the clerks.*

§ 4. The secretary at war may cause all accounts which may be rendered in pursuance of the said recited acts and of this act to be duly examined; and he is hereby authorised to pass and allow the same; and out of such monies as may be recovered in pursuance of the provisions of this act, to satisfy, as far as may appear to him to be just and proper, all demands which may be made by any persons claiming the return of any such fines, penalties, moieties of fines, half parts or residues of bounties, or other sums as aforesaid, or any payment in respect thereof. *Secretary at war to cause the accounts to be duly examined, and to allow the same, and empowered to satisfy the demands of claimants.*

§ 5. All fines, penalties, and forfeitures imposed by this act may be recovered in the manner hereinafter directed, or by action of debt, bill, plaint, or information, at the suit of H. M.'s attorney-general, to be applied to the use of H. M. *Recovery and application of penalties.*

§ 6. Persons making returns and paying money to order of secretary at war indemnified from penalties for neglect under former acts.

§ 7. Relates to a summary recovery of the penalties in the exchequer.

(20.) Particular Jurisdictions.

42 G. 3. c. 90. The city of London and Tower Hamlets.

Stat. 42 *G.* 3. *c.* 90. § 153. After reciting that as the militia of the city of *London* are now raised and regulated under and by virtue of stats. 36 *G.* 3. *c.* 92., and 39 *G.* 3. *c.* 82. (*a*): And as the militia of the Tower Hamlets are now raised and regulated by stat. 37 *G.* 3. *c.* 75. and *c.* 25., and the same are thereby respectively made subject to certain provisions in stat. 26 *G.* 3. *c.* 107. by this act repealed; enacts that all the provisions, powers, matters, and things in this act contained, in relation to any persons, acts, matters, and things as to which stat. 26 *G.* 3. *c.* 107. or any of the clauses or provisions thereof, were in force or applicable as to the said respective militias, shall be applied, practised, and put in full force as to all such persons, matters, and things, as far as the same can be applied, and are not contrary to any of the provisions of the said respective acts: but nothing in this act contained shall be construed to extend to repeal any of the provisions of the said acts, other than such as are in and by the said acts made subject to the rules and regulations of stat. 26 *G.* 3. *c.* 107.

Provisions of the 51 G. 3. c. 118. extended to the Tower Hamlets.

[By stat. 53 *G.* 3. *c.* 132. the provisions of stat. 51 *G.* 3. *c.* 118. as to the extension of service, and the oaths to be taken by persons enrolled or appointed to serve, are to extend to the militia, of the Tower Hamlets.]

The stannaries.

§ 154. Nothing in this act shall extend to the tinners in *Devon* and *Cornwall* (*b*); but the warden of the stannaries for the time being, in pursuance of H. M.'s commission in that behalf, and such as he shall commission and authorise under him, shall use the like powers, and array, assess, arm, muster, and exercise the said tinners as has been heretofore used, and according to the ancient privileges and customs of the stannaries.

The cinque ports.

§ 155. The warden of the cinque ports, two ancient towns and their members, and in his absence, his lieutenant or lieutenants, shall put in execution within the same all the powers and authorities granted by this act, in like manner as lieutenants of counties and their deputy-lieutenants may do; and may keep up and continue the usual number of soldiers in the said ports, towns, and members, unless he or they find cause to lessen the same; and the militia of the said ports, towns, and members, shall remain separate from the militia of the several counties within which the said ports, towns, and members are situate; and the said warden or his lieutenant or lieutenants shall, in pursuance of orders from H. M., in the manner prescribed by stat. 13 & 14 *C.* 2., notwithstanding one or more months' pay advanced be not reimbursed, raise and draw out the soldiers into actual service, and cause the persons charged as by the said act to provide their soldiers with pay in hand, not exceeding one month's pay, in such manner as if all the pay advanced and provided had been reim-

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(*a*) By the 1 *G.* 4. *c.* 100. For the better ordering and further regulating of the militia of the city of *London*, the 36 & 39 *G.* 3. *c.* 92. and c. 82. are repealed.

(*b*) Accordingly, the militia is raised and regulated by stat. 42 *G.* 3. *c.* 72., which repeals the former act; but as its provisions are of similar import with those here specified, it is unnecessary to insert them.

burned; and shall use the like powers, and array, assess, and arm, muster and exercise the said soldiers, and make assessments, and issue warrants for the assessments made or to be made for raising any trophy-money, and for defraying the necessary charges of trophies, and other incident expences of the militia of the said ports, towns, and members as hath been heretofore used, and according to their ancient privileges and customs; any thing in the said act or this act to the contrary notwithstanding. 42 G. 3. c. 90.

§ 156. In the counties of *Sussex* and *East Kent*, the churchwardens and overseers of the poor of the several parishes shall execute the powers given elsewhere to the constables and other peace officers. Counties of Sussex and Kent.

§ 150. After the number of persons which the *Isle of Wight* is to furnish to the militia of the county of *Southampton* shall have been appointed by H. M.'s lieutenant and the deputy-lieutenants, or by the deputy-lieutenants of the said county at large, the governor of the said island shall appoint the officers of the militia there, and shall act in the execution of this act as H. M.'s lieutenants of counties may do; and shall appoint five or more deputies to act for him; which deputies and officers shall be qualified and act as is prescribed with respect to like officers in *Wales*. And the militia of the said island shall be raised in the same manner as the militia of the county of *Southampton*, and shall be deemed a part of the militia of the said county. And after the same shall be so raised, the governor, lieutenant-governor, and deputies, shall order and direct the training and exercising the militia within the said island, in the same manner as the lieutenants and deputy-lieutenants may do elsewhere. And the militia raised within the said island shall remain therein as an internal defence thereof, unless H. M. shall otherwise order and direct. Isle of Wight.

§ 149. All provisions made for the county of *Northumberland* and the militia thereof, shall extend to the town of *Berwick-upon-Tweed* and the liberties thereof, except only in such cases wherein it is hereby otherwise provided for; and out of the persons returned in the lists for the said town, a number of private militia-men shall be chosen by lot to serve for the said town in the same proportion with the private militia-men appointed to serve for the other respective hundreds, wards, and other divisions within the said county of *Northumberland;* and if persons can be found within the said town and liberties thereof with such qualifications as are required for deputy-lieutenants and officers within cities and towns which are counties of themselves; the chief magistrate of the said town of *Berwick* shall appoint five deputy-lieutenants, and such number of officers of the militia as shall be proportionable to the number of militia-men which the said town shall raise, as their quota toward the militia of the county of *Northumberland*. And the lieutenant of the said county, and deputy-lieutenants, and all others acting under this act, shall carry it into execution within the said town and liberties thereof, but subject to such penalties as are inflicted on deputy-lieutenants and other officers of the militia for not being duly qualified. And the said militia shall annually join the militia of the county of *Northumberland*, and be exercised together, and shall then, and also in time of actual service, be deemed part of the militia of the county of *Northumberland* for the purposes aforesaid. Berwick-upon-Tweed.

42 G. 3. c. 90.

Craike. § 151. The constablery of *Craike*, which is a parcel of the county of *Durham*, surrounded by the North Riding of the county of *York*, shall be deemed situate within and a part of the said North Riding. Maker. That part of the parish of *Maker* that lies in the county of *Cornwall* shall be deemed part of the said county. Wokingham. The town and parish of *Wokingham* shall be deemed situate within and a part of the county of *Berks*. Filey. The township of *Filey* shall be deemed part of the East Riding of the county of *York*. Threapwood. *Threapwood* shall be deemed part of the parish of *Worthenbury*, in the county of *Flint*. Stamford Baron. The parish of *St. Martin*, called *Stamford Baron*, in the suburbs of the borough and town of *Stamford*, on the south side of the waters called *Welland*, shall be deemed to be situate within and part of the county of *Lincoln*.

No. I.

No. I. Form of Order to the High Consttable for Lists to be returned; with the Petty Constable's Warrant thereupon, pursuant to stat. 42 *G.* 3. *c.* 90. § 25.

——— shire. { To ———, gentleman, high constable of the ———, in the said county.

WE, A. D., B. D., *and* C. D., *esquires, three of his majesty's deputy-lieutenants for the county aforesaid, at our general meeting assembled, do hereby require you forthwith to issue out your order to the several constables, tithingmen, headboroughs, or, other officers of the several parishes, tithings, and places within your said ———, according to the form hereunder, or hereupon written, or hereunto annexed. Given under our hands and seals the ——— day of ——— in the year ———.*

Form of the High Constable's Order above referred to

——— shire.—To the constable of ———.

BY virtue of an order from three of his majesty's deputy-lieutenants, of and for the said county, unto me directed, you are hereby required, within fourteen days after the receipt of this order, to give or leave notice in writing, in the form hereunto annexed, marked (A.), *to or for every occupier of every dwelling-house, where any person shall reside within the limits of the place for which you act, at his or her dwelling-house, or where such dwelling-house shall be divided into different stories or apartments, and occupied distinctly by several persons, then to or for the occupier of each distinct story or apartment, to prepare or produce, to you within fourteen days next ensuing the day of giving such notice, a list in writing, to the best of his or her belief of the christian and surname of each and every man resident in such dwelling-house, or distinct story or apartment, between the ages of eighteen and forty-five years, specifying the ages of, and other particulars relating to, the persons returned therein, according to such form. And you are also required, within one month after the delivery of such notice by you, to make out a fair and true list in writing, according to the form hereunto annexed, marked* (B.) *of the names of all the men usually and at that time dwelling within your parish, or place, of such ages as aforesaid, as well of those who have not made any return, or been returned in pursuance of such notices as aforesaid, as of those who shall have made such returns, or been returned in*

pursuance thereof, distinguishing their respective ages, ranks, and occupations, and such other particulars as aforesaid, and those who have made returns to such notices, from those who have neglected to make such returns, (and when such returns shall not have been made, such ages and other particulars are to be specified by you in your return according to the best of your belief, and where the true names of such persons cannot be procured, their common appellation shall be sufficient,) and distinguishing which of the persons so returned labour under any infirmity likely to incapacitate them from serving as militia-men, and which of them claim to be exempt from serving in the militia, and on what account; which list so fairly and truly made as aforesaid, or a true and exact copy thereof, you are hereby required to return, upon oath, to the deputy-lieutenants and justices of the peace, for the said county, at their meeting, for that purpose to be held on the —— day of ——— next ensuing the date hereof, at ———, in the said county, at the hour of ——— in the forenoon. And you are hereby further required to affix a true copy of the said list, so to be made out as aforesaid, on the door of the church or chapel belonging to your parish, township, or place, and if such place hath no church or chapel belonging thereto, then on the door of the church or chapel of some parish or place thereto adjoining, on some Sunday *morning, which shall be three days at the least before the said ——— day of ———. And also you are to affix notice in writing at the bottom of the said list, of the day and hour and place of the said meeting, and that all persons who shall think themselves aggrieved may then appeal, and that no appeals will be afterwards received.*

Persons exempt from serving in the regular militia.

And I give you notice, that no peer of this realm, nor any commissioned officer in his majesty's other forces, or in any one of his majesty's castles or forts, nor any officer on the half-pay of the navy, army, or marines, non-commissioned officer, or private man serving in his majesty's other forces, commissioned officer serving, or who has served four years in the militia, nor any resident member of either of the universities, clergyman, teachers licensed within the county to teach in some separate congregation, whose place of meeting shall have been duly registered within twelve months previously to the ——— day of ——— last, constable, or other peace officer, articled clerk, apprentice, seaman or sea-faring man, [nor any person mustered, trained, or doing duty or employed in any of his majesty's docks or dock-yards for the service thereof, or employed and mustered in his majesty's service in the Tower of *London*, *Woolwich Warren*, the several gun-wharfs at *Portsmouth* or at the several powder mills, powder magazines, or other store-houses belonging to his majesty, under the direction of the Board of Ordnance; nor any person being free of the company of watermen of the river *Thames* (*a*);] *nor any poor man who has more than one child born in wedlock, is liable to serve personally, or provide a substitute to serve in the militia; and that no person having served personally or by substitute, according to the directions of any act relating to the militia, is obliged to serve again until by rotation it shall come to his turn; but no person who has served only as a substitute or volunteer in the militia is by such service exempt from*

(*a*) The part in Roman may be omitted if not applicable to the county in which the return shall be required. — *Ed.*

serving again if he shall be chosen by ballot. And that every person enrolled and serving as an effective member of any corps of yeomanry or volunteers in Great Britain, *and who shall be duly returned and certified as such, is exempt from being liable to serve personally or to find a substitute in the militia, so long as he shall continue to be, and be returned or certified to be an effective member* [*and,* in case the local militia act shall be again carried into execution, *all persons enrolled to serve in the local militia*] *are exempt from service, and are not liable to be balloted to serve in the regular militia* for one year, *from the expiration of their period of service in the said local militia; but no person is entitled to claim any such exemption who shall not produce a certificate signed by the commanding officer of the regiment of local militia in which he may have served, that he attended at the last period of annual training and exercise, or that he was prevented by illness or bodily infirmity, certified to his commanding officer, at the last period of annual training and exercise, or that he was absent by permission of his commanding officer*].

Herein fail not. Given under my hand the ——— day of ———.

JOHN WORSEY,
High constable of the east part of the hundred of *Cuttlestone,* in the county of *Stafford.*

Schedule (A.)

To A. H. of ———, Yeoman.

Take notice, that you are hereby required within fourteen days * from the date hereof to prepare and produce a list in writing, to the best of your belief, of the christian name and surname of each and every man resident in your dwelling-house, between the ages of eighteen and forty-five, distinguishing in such list the several particulars mentioned in the columns thereof; and you are to sign such list with your own name, and to deliver or cause the same to be delivered to me.

Dated the Day of A. C. Constable.

Names.	Description.	Age.	Whether any Child, and if any, whether any under 14.	Exempt, or not exempt, from Militia.	Grounds of Exemption.	Effective Volunteer or Yeoman.	Licensed Teacher not carrying on Trade, or Medical Practitioner actually practising.
A. B.	Housekeeper.	40	Children under 14.	Exempt.	Clergyman.	—	—
C. D.	Servant.	28	None.	Not.	—	—	—
E. F.	Lodger.	24	None.	Not.	—	Volunteer.	—
G. H.	Inmate.	30	None.	Not.	—	Yeomanry corps.	—

N. B. If any House be divided into distinct stories or apartments, occupied distinctly, each distinct occupier is required to make this return.

☞ Neglect of compliance with this notice will subjec the party to a penalty of Ten Pounds.

Take notice, that the ——— Day of ——— instant, at the Hour of —— in the Forenoon, at ———, is appointed for hearing Appeals within this subdivision by persons claiming to be exempt from serving in the Militia.

A. C. Constable of

* Should the lists be required under the First section of the 46 *G.* 3. *c.* 91. the Constables are to leave notices with the Householders within seven Days after the receipt of the order, the Householders to produce their lists within two Days, and the Constables to make out the list of persons liable to serve in ten Days after the delivery of the notice to the Householder.

Schedule (B.)

[Return to be made by the Constable to the Clerk of the Subdivision Meetings.]

LIST of Persons between the Ages of Eighteen and Forty-five, dwelling within the Parish of A., in the County of ———.

Names.	Description.	Age.	If any Child, and if any, whether any under Fourteen.	Exempt, or not exempt, from Militia.	Grounds of Exemption.	Effective Volunteer or Yeoman.	Licensed Teacher not carrying on Trade, or Medical Practitioner actually practising.
A. B.	Housekeeper.	40	Child under 14.	Exempt.	Officer of Marines.	—	—
C. D.	Servant.	28	None.	Not exempt.	—	Effective Yeomanry.	—
E. F.	Lodger.	24	3 Children not under 14.	Not exempt.	—	—	Practising Apothecary.
G. H.	Inmate.	19	None.	Exempt.	Apprentice.	—	—
I. K.	Housekeeper.	41	—	—	—	—	—
L. M.	Housekeeper.	34	—	—	—	—	—

Schedule (C).

Return to be made by the Clerk of the Subdivision Meetings, to the Clerk of the General Meetings.

Parishes.	Descriptions of Persons liable to serve.				Total liable to serve.	Persons exempt from serving.				Total exempt.
	Having no Children.		Having Children.							
	Under 30.	Above 30.	No Child under 14.	Any Child under 14.		Yeomanry and Volunteers.	Army, Marines, Sea-Fencibles.	Clergy, Licensed Teachers, Medical Men, and Constables.	Infirm.	
A.	130	150	120	135	535	82	10	4	8	104
B.	210	200	214	225	849	100	20	10	12	142
C.										
General Totals.										

Schedule (D).

Return to be made by the Clerk of the General Meetings to the Privy Council.

Subdivision.	Description of persons liable to serve.				Total liable to serve.	Persons exempt from serving.				Total Exempt.
	Having no Children		Having Children.							
	Under 30.	Above 30.	No child under 14.	Any child under 14.		Yeomanry and Volunteers.	Army, Marines, Sea-Fencibles.	Clergy, Licensed Teachers, Medical Men, and Constables.	Infirm.	
A.	500.	340	420	400	1660	300	50	20	30	400
B.										
C.										
General Totals.										

Schedule (E). Referred to by § 54. of stat. 42 G. 3. c. 90.
Subdivision of ——, in the county of ——.
Return of enrolment, dated the —— day of ——.

Parishes.	NAMES OF MEN.			Date of Enrolment.	Ages.	CLASSES.				
	Principal.	Substitutes.	Volunteers.			1st.	2d.	3d.	4th.	Last.
Islington	Sam. Jones	—	—	April 21	30	X				
C.	Tho. Smith	Ed. Jones	—	22	—	—	X	—		
D.	—	—	Tho. Grey.	23	—	—	—	—	X	
—	—	—	—	—	—	—	—	X	—	X
—	—	—	—	—						
Totals serving.										

Signed A. B. Clerk to Subdivision Meeting.

(F). RETURN (referred to by § 98. of stat. 42 G. 3. c. 90.) of —— company in the —— of the militia of the county of ——, dated the —— day of ——.

Hundreds or Divisions	Parishes.	NAMES OF MEN SERVING.			Ages.	CLASSES.				
		Principals.	Substitutes.	Volunteers.		1st.	2d.	3d.	4th.	Last.
H.	Islington.	Sam. Jones.	—	—	32		X			
—	—	—	Tho. Grey.	—	24				X	
—	—	—	—	Tho. Smith	26	X				
M.	H	—	—	—			X			
—	—	—	—	—			X			
Totals.										

Signed A. B. Captain of —— Company.

(G). RETURN (referred to by § 98. of stat. 42 G.3. c.90.) of Private Militia serving for the County of ——, dated the —— day of ——.

Description of Men.	No. of each.	Years of Service unexpired.					No. of Men in each Class.				
		1.	2.	3.	4.	5.	1st.	2d.	3d.	4th.	Last.
Principal											
Substitutes											
Volunteers											
Totals -											

A. B. Clerk to General Meetings.

N.B. If the militia of any county, riding, or place, is divided into more than one regiment, battalion, or corps, a separate return is to be made for each, and the description of the regiment, &c. put at the top of the return.

No. II.

No. II. Order to the High Constable to give Notice to the Petty Constables of the Number appointed to serve within each Parish or Place, and of the Time and Place for Balloting, pursuant to stat. 42 G.3. c.90. § 41.

——shire, subdivision of —— } To *H. C.* gentleman, high constable of the hundred of ——, within the said county.

WE, A.D. *and* B.D., *esquires, deputy-lieutenants,* [or in case only one deputy-lieutenant be present, *we,* A.D. *deputy-lieutenant, and* J.P. *esquire, justice of the peace,*] *in and for the said county at our subdivision meeting assembled, for apportioning the number of private men to serve in the regular militia of the said county for each parish, tithing, or place, within the said subdivision, do hereby require you to give notice to the several constables, tithingmen, headboroughs, or other officers of the several parishes, tithings, and places within the said subdivision, that we have appointed the number of men in the schedule hereunder or hereupon written specified to serve in the said militia for their respective parishes, tithings, and places, and that our next subdivision meeting, for causing the said men to be chosen by ballot to serve in the said militia, will be at —— in —— in the said county, on the —— day of —— now next ensuing, at the hour of —— in the forenoon. Given under our hands and seals the —— day of —— in the year ——.*

The Schedule above referred to.

Parishes, Tithings, or Places.	Number of Men to serve.
A	3
B	5
C	7

Form of the High Constable's Notice to the Petty Constables.

——— shire subdivision of ———. } To the constable of ——— in the said county.

BY virtue of an order from the deputy-lieutenants and justices of the peace for the said county, at their subdivision meeting assembled, for apportioning the number of private militia men to serve in the regular militia of the said county, for each parish, tithing, or place within the said subdivision, You are hereby required to give notice to the several persons within your constablewick liable to serve in the militia of the said county, that ——— men are appointed to serve for the said township [or, if the lists of two or more townships are added together then say, *that ——— men are appointed to serve jointly for your said township, and for the township of ——— in the said subdivision,*] *and that the next subdivision meeting for causing the said men to be chosen by ballot to serve in the said militia, will be at ——— in ——— in the said county, on the ——— day of ——— now next ensuing, at the hour of ——— in the forenoon. Given under my hand the ——— day of ——— in the year of our Lord ———.*

A. C. *Chief Constable of the said* ———.

No. III. Order to the High Constable to direct the Petty Constables to give Notice to Balloted Men to appear to be sworn and enrolled, pursuant to stat. 42 *Geo.* 3. *c.* 90. § 41. No. II

——— shire subdivision of ———. } To *H. C.* gentleman, high constable of the hundred of ——— within the said county.

WE A. D. *and* B. D. *esquires, deputy-lieutenants, at our subdivision meeting, assembled for causing the men appointed to serve in the regular militia for the several parishes, tithings, and places within the said subdivision, to be chosen by ballot, do hereby order and require you forthwith to issue your warrant to the several constables, tithingmen, headboroughs, or other officers within the said subdivision, directing them to give notice to each of the several persons in the schedule hereunder or hereupon written named, who have been this day chosen by ballot, to serve in the said militia for their respective parishes, tithings, or places to be and appear at our next meeting to be held at ——— within the*

said subdivision, on ——— the ——— day of ——— next, at the hour of —— in the forenoon, to take the oath in that behalf required by law, and to be enrolled to serve in the said militia as a private militia-man for the space of five years, or otherwise to produce for his substitute a man of the same county, or some adjoining parish or place whether in the same county or not, able and fit for service, who shall have not more than one child born in wedlock, and who shall be approved in manner directed by the several acts of parliament relating to the militia; which notice is to be given or left at the place of abode of every man so chosen, at least seven days before such meeting; and also requiring the said constables or other officers to attend in person at the said meeting, there to make a return upon oath of the days whereon the said notices were served. Given under our hands and seals the ——— day of ——— in the year of our Lord ——.

The Schedule above referred to.

Parishes, Tithings, or Places.	Names of Balloted Men.
A..................................	D. E.
B..................................	E. F.
C..................................	G. H.

Form of the said Warrant.

——— shire } subdivision of } ——. } To the constable of ———.

BY virtue of an order from the deputy-lieutenants for the said county, at their subdivision meeting, assembled for causing the men appointed to serve in the regular militia of the said county, for the several parishes, tithings, and places within the said subdivision to be chosen by ballot, you are hereby directed and required to give notice to A. B. C. D. *and* E. F., *inhabitants within your constablewick chosen by ballot at the said meeting to serve in the said militia, that they do appear at ——— in the said subdivision, on ——— the —— day of ——— next at the hour of —— in the forenoon, then and there to take the oath in that behalf required by law, and to be enrolled to serve in the militia of the said county, as private militia-men, for the space of five years, or otherwise, to produce for their substitutes men of the same county, or some adjoining parish or place, whether in the same county or not, able and fit for service, who shall have not more than one child born in wedlock, and who shall be approved in manner directed by the several acts of parliament relating to the militia, which notice you are to give unto them, or to leave the same at their respective places of abode, at least seven days before the said ——— day of ——— next. And be you then there to make a return upon oath of the days whereon the said notices were served. Herein fail you not. Given under my hand the ——— day of ——— in the year of our Lord ———.*

H. C. *Chief Constable of the said Ward.*

Form of the Notice to be given to the Balloted Men, or left at their Dwelling-houses, where personal Notice cannot be given.

——— shire, subdivision of ———. } To *William Harrison*, of the ——— of ——— in the said county.

NOTICE is hereby given unto you, that you have been chosen by ballot to serve in the regular militia of the said county, and that you are to appear at the next meeting of the deputy-lieutenants and justices of the peace for the said subdivision, to be held at ——— in the said subdivision, on ——— the ——— day of ——— next, at the hour of ——— in the forenoon, to take the oath on that behalf required, and to be enrolled to serve in the said militia as a private militia-man for the space of five years, or otherwise to produce for your substitute a man of the same county, or of some adjoining parish or place, whether in the same county or not, able and fit for service, who shall have not more than one child born in wedlock, and who shall be approved in manner directed by the several acts of parliament relating to the militia. Given under my hand the ——— day of ———, in the year of our Lord ———.

A. C. *Constable of* ———.

No. IV. Form of an Information and Complaint against a Militia-man not appearing to be Sworn and Enrolled, pursuant to stat. 42 *G.* 3. *c.*90. § 45. No. IV.

——— shire. } *THE information and complaint of* A. I. *of ——— in the said county, gentleman, made upon oath before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, the ——— day of ———, in the year of our Lord ———, who saith, that* A. O., *late of ——— in the said county, yeoman,* (*not being one of the people called Quakers,*) *hath been duly chosen by ballot to serve as a private militia-man in the regular militia of the said county, and hath had due notice to appear before the deputy-lieutenants and justices of the peace in and for the said county, at their subdivision meeting, held at ——— in the said county, on ——— the ——— day of ——— last, to take the oath in that behalf required, and to be enrolled to serve in the said militia as a private militia-man, or to produce a fit person to serve as his substitute; and that the said* A. O. *hath refused* [or *neglected,* as the case may be] *to appear at the said meeting, and take the said oath, and serve in the militia,* (*a*) [or *refused* or *neglected,* as the case may be, *to take the said oath and serve in the militia* (*a*)] *and hath also neglected to provide any fit person to serve as his substitute, whereupon the said* A. I. *prayeth that justice may be done against him the said* A. O. *for the said offence.*

Before me, J. P.

(*a*) Refer to note (*a*), page 428. as to the introduction of the words, "*and serve in the militia,*" in the 45th sec. of stat. 42 *G.*3. *c.*90.

Summons thereupon.

——— shire.—To the constable of ———.

WHEREAS complaint and information upon oath have been made unto me, J. P. *esquire, one of his majesty's justices of the peace in and for the said county, that* A. O. *late of* ———, *in the county aforesaid, yeoman, (not being one of the people called Quakers,) hath been duly chosen by ballot to serve as a private militia-man in the regular militia of the said county, and hath had due notice to appear before the deputy-lieutenants and justices of the peace in and for the said county, at their subdivision meeting, held at* ——— *in the said county, on* ——— *the* ——— *day of* ——— *last, to take the oath in this behalf required, and to be enrolled to serve in the said militia as a private militia-man, or to produce a fit person to serve as his substitute; and that he the said* A. O. *hath refused* [or *neglected,* as the case may be] *to appear at the said meeting and take the said oath* and serve in the militia (*a*), [or *refused* or *neglected,* as the case may be, *to take the said oath* and serve in the militia, (*a*);] *and hath also neglected to provide any fit person to serve as his substitute; I do therefore require you forthwith to summon the said* A. O. *to appear before me at the house of* ———, *in* ———, *in the said county, on* ——— *the* ——— *day of* ——— *next, at the hour of* ——— *in the forenoon, to answer unto the said complaint, and to shew cause why the penalty of ten pounds should not be levied upon his goods and chattels for the said offence. Herein fail you not. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord* ———.

Warrant of Distress for the Penalty of 10*l.*

——— shire.—To the constable of ———.

WHEREAS due proof upon oath hath been made before me, one of his majesty's justices of the peace in and for the said county of ———, *that* A. O. *of* ———, *in the said county of* ———, *yeoman, (not being one of the people called Quakers) having been duly chosen by ballot to serve as a private militia-man in the regular militia of the said county, and due notice having been given unto him to appear before the deputy-lieutenants and justices of the peace in and for the said county, at their subdivision meeting, held at* ———, *in the said county, on the* ——— *day of* ——— *last, to take the oath in that behalf required, and to be enrolled to serve in the said militia as a private militia-man, or to provide a fit person to serve as his substitute, hath refused* [or *neglected,* as the case may be] *to appear at the said meeting, and take the said oath,* and serve in the militia (*a*), [or *refused* or *neglected,* as the case may be, *to take the said oath,* and serve in the militia (*a*),] *and also hath neglected to provide any fit person to serve as his substitute, whereby he the said* A. O. *hath forfeited the sum of ten pounds; I do there-*

(*a*) Refer to note (*a*), page 428., as to the introduction of the words "*and serve in the militia,*" in the 45th sec. of stat. 42 G. 3. c. 90.

force, in his majesty's name, command you to levy the said sum of ten pounds by distress of the goods and chattels of him the said A. O. *And if within the space of* [*four*] *days next, after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of ten pounds to the deputy-lieutenants of the said subdivision, or to such person as they shall appoint to receive the same, for providing a substitute to serve for him the said* A. O., *and for the other purposes by law directed for the application thereof; rendering the overplus* (*if any shall be*) *on demand unto him the said* A. O., *the reasonable charges of such distress and sale being first deducted, and for want of sufficient effects of him the said* A. O. *whereon to levy the said sum of ten pounds, that then you certify the same to me, together with the return of this precept. Herein fail you not. Given under my hand and seal the* —— *day of* ——, *in the year of our Lord* ——.

Constable's Return of the Warrant of Distress (to be endorsed on the Warrant).

—— shire. } A. C. *constable of* ——, *in the said county, maketh oath before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, that he cannot find any goods, or chattels belonging to the within named* A. O., *and that the said* A. O. *hath not, to the knowledge or belief of this deponent, any goods or chattels whereon the within mentioned sum of* 10*l*, *or any part thereof, can be levied as within directed. Sworn the* —— *day of* —— *one thousand eight hundred and twenty, before me* ——.

No. V. Warrant of Distress for Bounty to Quakers' Substitutes, pursuant to the 50 sect. of stat. 42 G. 3. *c.* 90. and the 112th sect. of stat. 43 G. 3. *c.* 50. No. V.

—— shire. } To the constable of the —— of —— in the said county ——.

WHEREAS due proof upon oath hath been made before us two of the deputy-lieutenants for the said county, that A. Q. *of the* —— *of* —— *aforesaid, yeoman, being one of the people called Quakers, hath been duly chosen by ballot, to serve in the regular militia of the said county, and after due notice given unto him, hath neglected to appear, and to take the oath in that behalf required,* [and serve in the said militia, (*a*)] *and hath neglected to provide any fit person to serve for him as his substitute; And whereas we the said deputy-lieutenants have, upon as reasonable terms as might be, namely for the sum of* —— *provided and hired* A. S. *a fit person to serve in the said militia as the substitute of him the said* A. Q.; *and the said* A. S., *after having been duly examined and approved, hath taken the oath and subscribed his consent to serve in the said militia, for the same term and on the same conditions as is directed by the laws in force relating to the*

(*a*) Refer to note (*a*), page 428.

militia, in the case of substitutes produced by persons chosen by ballot: And whereas the said sum of ——— agreed to be given by us to the said A. S. *has been paid to the said* A. S. *upon our certificate by the overseers of the poor of the said ——— of ——— for which parish the said* A. S. *has been provided out of the poor rates of the said parish, pursuant to the directions of the statute in that case made and provided. We do therefore hereby require and command you to levy the said sum of ——— by distress and sale of the goods and chattels of him the said* A. Q., *and to pay the same unto the said overseers of the poor of the said parish of ———, rendering the overplus (if any shall be) unto him the said* A.Q. *after deducting the charges of the said distress and sale. Herein fail you not. Given under our hands and seals the ——— day of ———, in the year of our Lord ———.*

No. VI. No. VI. The Order of the Lieutenant and Deputy-Lieutenants for calling out the Militia for training and exercise, pursuant to stat. 42 *G.* 3. *c.* 90. § 87.

——shire Militia.

IN pursuance of an act of parliament made and passed in the forty-second year of the reign of his majesty king George III., *intituled " An act for amending the laws relating to the militia in* England, *and for augmenting the militia," and of the several other acts relating to the militia: And by virtue of the powers vested in us, we the lieutenant and deputy-lieutenants of the said county of ———, at a general meeting this day assembled, do hereby, with the approbation of his majesty, order and appoint that all the men enrolled or serving in the regular militia of the said county, shall appear at ———, in the said county, on ——— the —— day of ——— next, to be trained and exercised for the space of —— days. Given under our hands and seals this —— day of —— one thousand eight hundred and ———.*

Form of Notice to be inserted in the Public Papers.

—— shire Militia.

NOTICE is hereby given, that all the men enrolled or serving in the regular militia of the said county of ———, are to assemble at ———, in the said county, on ——— the —— day of ——— next, for the purpose of being trained and exercised for the space of —— days. And any militia-man, not labouring under any infirmity incapacitating him, who shall not appear at the time and place above mentioned will be deemed a deserter.

W. K. *Clerk of the General Meetings.*

Form of Order to the High Constable.

——— shire subdivision of ———. } To ——— gentleman, high constable of the hundred of ———, in the said county.

WE ——— two of the deputy-lieutenants for the county aforesaid, at our subdivision meeting assembled, do hereby require you forthwith to issue your order to the several constables, tithing-men, headboroughs, or other officers of the several parishes, tithings,

and places within the said subdivision, according to the form hereunder or hereupon written, or hereunto annexed. Given under our hands and seals the ——— day of ——— in the year of our Lord one thousand eight hundred and ———.

Form of Order from High Constable to Petty Constable.

——— shire
subdivision of } To the constable of ——— in the said county.
———.

BY virtue of an order from the deputy-lieutenants acting for the said subdivision, at a meeting assembled, unto me directed, I do hereby give you notice, that all the men enrolled, or serving in the regular militia of the said county, are to assemble at ——— in the said county, on ——— the ——— day of ——— next, for the purpose of being trained and exercised for the space of ——— days. And I do hereby require you forthwith upon receipt hereof, to cause notice thereof to be affixed on the door of the church or chapel belonging to your parish, tithing, or place, or if there be no church or chapel belonging thereto on the door of the church or chapel of some parish, tithing, or place thereunto adjoining, and also to give notice in writing to the several militia men enrolled to serve for your said parish, tithing, or place, by serving them personally, or leaving the same at their usual places of abode, to attend at the time and place above mentioned.

Dated this ——— day of ———, ———.

———, High Constable.

Form of Notice to be affixed on the Church Door.

NOTICE is hereby given, that all the men enrolled or serving in the regular militia of the county of ——— are to assemble at ———, in the said county, on ——— the ——— day of ——— next, for the purpose of being trained and exercised for the space of ——— days. And every militia-man not labouring under any infirmity incapacitating him, who shall not appear at the time and place appointed for the training and exercise, of which this is to be a sufficient notice, will be deemed a deserter.

Dated the ——— day of ———, ———.

———, Constable.

Notice to Militia-men.

To ———, a militia-man for ———, in the county of ———.

I DO hereby give you notice, that you are to appear at ——— in the said county, on the ——— day of ——— next at the hour of ——— in the forenoon, for the purpose of being trained and exercised, for the space of ——— days, pursuant to the several acts of parliament relating to the militia; and that if you do not comply with this notice, you will be deemed a deserter.

Dated this ——— day of ———, one thousand eight hundred and ———.

———, Constable.

No. VII.

No. VII. The Lieutenant's Order for embodying the Militia, pursuant to the 114th sect. of stat. 42 G. 3. c. 90.

———— shire Militia.

IN pursuance of an act of parliament made and passed in the forty-second year of the reign of his majesty king George *the third, intituled "An act for amending the laws relating to the militia in* England, *and for augmenting the militia," and of the several other acts of parliament relating to the militia; and by virtue of his majesty's warrant, under his sign manual for drawing out and embodying the regular militia of the said county, and of the powers vested in me as lieutenant of the said county; I do hereby order and direct, that all the men enrolled, or serving in the regular militia of the said county, be drawn out and embodied at* ———, *in the said county, on* ——— *the* ——— *day of* ——— *next, then and there to be held in every respect ready to march, as occasion shall require, to such parts within the united kingdom of* Great Britain *and* Ireland, *as his majesty shall judge proper to assign them, and to be put under the command of such general officer or officers as his majesty shall be pleased to appoint over them, and to obey such further orders as shall be judged necessary for the safety and defence of the united kingdom.*

Given under my hand and seal the ——— *day of* ——— 18—.

———— *Lieutenant.*

Form of Notice to be inserted in the Public Papers.

———— shire Militia.

NOTICE is hereby given, that the regular militia of the said county is ordered to be drawn out and embodied for actual service, at ———, *in the said county, on* ——— *the* ——— *day of* ———. *And all militia-men (not labouring under any infirmity incapacitating them to serve), who shall not appear at the time and place above mentioned, will be liable to be apprehended and punished as deserters. By order of the lord lieutenant.*

W. K. *Clerk of the General Meetings.*

Form of Order to the High Constable.

County of ——— } To ——— high constable of the hundred of ———, in the said county.

IN pursuance of an act of parliament made and passed in the forty-second year of the reign of his majesty king George *the third, intituled "An act for amending the laws relating to the militia in* England, *and for augmenting the militia;" and of the several other acts of parliament relating to the militia; and by virtue of his majesty's warrant under his sign manual, for drawing out and embodying the regular militia of the said county, and of the powers vested in me as lieutenant of the said county, I do hereby order and direct you forthwith to issue your precept in the form hereunder written or hereunto annexed, to the constables, tithingmen, headboroughs, or other officers of the several parishes, tithings, and places within your hundred, requiring them, upon receipt thereof, forthwith to cause notice in writing to all the men enrolled or serv-*

ing in the said militia for their respective parishes, tithings, or places, to be given to them, or left at their usual places of abode, to be and appear at ——, in the said county, on —— the —— day of —— next, then and there to be drawn out and embodied for actual service.

——————, *Lieutenant.*

Form of Notice to be given by the High Constable to the Petty Constables.

—— shire subdivision of ——. } To the constable of ——, in the said county.

BY virtue of an order from the lieutenant of the said county, I do hereby require you upon receipt hereof forthwith to cause notice in writing to all the men enrolled, or serving in the regular militia of the said county for your parish, tithing, or place, to be given to them, or left at their usual places of abode, to be and appear at ——, in the said county, on —— the —— day of —— next, then and there to be drawn out and embodied for actual service. And I also require you to cause notice thereof in the form hereunder written, to be affixed on the door of the church or chapel belonging to your parish, tithing, or place, and also upon some other conspicuous place or places therein. Dated this —— day of ——, one thousand eight hundred and ——.

——, *High Constable.*

Form of Notice to be affixed on the Church Door.

NOTICE is hereby given, that all the men enrolled or serving in the regular militia of the county of ——, are to assemble at ——, in the said county, on —— the —— day of —— next, then to be embodied for actual service, and every militia man, not labouring under any infirmity incapacitating him, who shall not appear at the time and place above mentioned, will be deemed a deserter. Dated the —— day of ——, ——.

——, *Constable.*

Form of Notice to Militia-men.

To ——, serving in the regular militia of the county of ——.

I DO hereby give you notice, that you are to appear at —— in the said county, on the —— day of —— at twelve o'clock, at noon, at which place and time all the men enrolled, or serving in the regular militia of the said county, are to be drawn out and embodied for actual service. And if you do not appear at the place and time above mentioned, you will be liable to be apprehended and punished as a deserter. Dated the —— day of —— one thousand eight hundred and ——.

——, *Constable.*

No. VIII.

No. VIII. Oath of a Balloted Man to entitle him to the Allowance of half the Price of a Volunteer from his Parish, under the 122d sect. of stat. 42 G. 3. c. 90.

——— shire, subdivision of ———. } *A. B., of the township of ——— in the subdivision of ——— in the county of ———, weaver, chosen by ballot to serve for the said ——— in the regular militia of the said county now embodied and in actual service, and who hath been sworn and enrolled, personally to serve therein,* [or *who hath provided* C. D. *as his substitute, who has been sworn and enrolled,* as the case may be,] *maketh oath before us, two of the deputy-lieutenants, acting within the said subdivision, that he is not possessed of any estate in lands, goods, or money of the clear value of* 500l. *Sworn before us the ——— day of ——— one thousand eight hundred and ———.*

Order for the above Allowance.

——— shire, subdivision of ———. } To the churchwardens and overseers of the poor of the township of ——— in the said subdivision.

WHEREAS A. B., *of your said township, weaver, hath been chosen by ballot to serve for your said ——— in the regular militia of the said county now drawn out and embodied for actual service; and hath been sworn and enrolled personally to serve, and hath served therein for the space of one month and upwards, and not been disapproved of, and discharged by the commanding officer,* [or *hath provided* C. D. *his substitute, who hath been sworn and enrolled to serve, and hath served therein for the space of one month and upwards, and not been disapproved of, and discharged by the commanding officer:*] *And the said* A. B. *hath made oath before us that he is not possessed of any estate in lands, goods, or money of the clear value of* 500l. *Therefore we, two of the deputy-lieutenants, acting within the said subdivision, do hereby order you to pay to the said* A. B. *the sum of ——— which we adjudge to be one-half of the current price paid for a volunteer or substitute within the said county, out of the rate made for volunteers within your said township; or in case no volunteers shall have been provided or produced by you, then out of a rate to be made and collected, agreeable to the poor's rate, pursuant to the several acts of parliament relating to the militia. Given under our hands the ——— day of ———, in the year of our Lord ———.*

No. IX.

No. IX. Oath of a Balloted Man's Wife for obtaining the Allowance under stat. 43 G. 3. c. 47. § 2.

——— shire } The complaint upon oath of *A. M.* (the wife of *B. M.*) now dwelling in the parish of ——— in the said county, taken before me one of his majesty's justices of the peace for the said county, the ——— day of ———, one thousand eight hundred and ———.

WHO says that she is the wife of B. M. *a balloted man, serving for the said parish of ———* [or if serving for any other parish, *for the parish of ——— in the said county,*] *in the regular*

militia of the said county, now embodied and called out into actual service, and that she has two children by the said B. M., *born in wedlock, viz.* C. *a son aged* —— *years, and* D. *a daughter aged* —— *years now dwelling with her in the said parish of* ——, *and that she is unable to support herself and her said children.*

Sworn before me, A. M.

Form of Summons for the Overseer to shew cause why an Order of Maintenance should not be made.

—— shire } To the overseers of the poor of the parish of —— in the said county.

WHEREAS *complaint upon oath hath been made before me, one of his majesty's justices of the peace in and for the said county by* A. M. (*wife of* B. M.) *now dwelling within your said parish,* [or if dwelling in any other parish, then, *in the parish of* —— *in the said county,*] *that she is the wife of the said* B. M. *a balloted man serving for your said parish, in the regular militia of the said county, now embodied and called out into actual service, and that she has two children by the said* B. M. *born in wedlock, viz.* C. *a son aged* —— *years, and* D. *a daughter aged* —— *years, now dwelling with her in your said parish, and that she is unable to support herself and her said children: I do therefore hereby require and command you to appear before me at* —— *in the said county, on* —— *the* —— *day of* —— *next, at the hour of* —— *in the forenoon, to shew cause why an order should not be made upon you for the payment of a weekly allowance to the said* A. M. *for herself and her said children, pursuant to the directions of the act of parliament in that case made and provided. Given under my hand the* —— *day of* ——, *one thousand eight hundred and* ——.

Form of Order of Maintenance.

——shire } To the overseers of the poor of the parish of —— in the said county.

WHEREAS *complaint upon oath hath been made before me, one of his majesty's justices of the peace in and for the said county, by* A. M. (*wife of* B. M.) *now dwelling in your said parish,* [or if dwelling in any other parish, then, *in the parish of* —— *in the said county,*] *that she is the wife of* B. M. *a balloted man, serving for your said parish in the regular militia of the said county, now embodied and called out into actual service; and that she has two children by the said* B. M., *born in wedlock, viz.* C. *a son aged* —— *years, and* D. *a daughter aged* —— *years, now dwelling with her in your said parish, and that she is unable to support herself and her said children. And whereas you the said overseers have been duly summoned by me, to shew cause why an order should not be made upon you for weekly allowance to the said* A. M. *for herself and her said children, pursuant to the directions of the statute in that case made and provided, but have not shewn to me any sufficient cause why such order should not be made, I do therefore hereby order you to pay unto the said* A.M. *out of the rates for the relief of the poor of your parish, the following weekly allowance for the support of herself and her said*

children, according to the usual and ordinary price of labour in husbandry within the said county; that is to say, the sum of ——— *for each of the said children, and the sum of* ——— *for the said* A. M., *the first payment of the said weekly allowance to be made on the* ——— *instant. Given under my hand and seal the* ——— *day of* ———, *one thousand eight hundred and* ———.

No. X.

No. X. Form of Order of Maintenance where the Balloted Man serves for any other Parish in the same County than that in which his Family resides, under the 14th sect. of stat. 43 *G.* 3. *c.* 47.

———shire } To the overseers of the poor of the parish of ——— in the said county.

WHEREAS complaint upon oath hath been made before me, one of his majesty's justices of the peace in and for the said county, by A. M. (*wife of* B. M.), *now dwelling in your said parish of* ——— *that she is the wife of* B. M. *a balloted man, serving in the regular militia of the said county, now embodied and called out into actual service, for the parish of* ——— *in the said county; and that she has two children by the said* B. M. *born in wedlock, viz.* C. *a son aged* —— *years, and* D. *a daughter aged* —— *years, now dwelling with her in your said parish, and that she is unable to support herself and her said children: And whereas the said overseers of the poor of the said parish of* ——— *have been duly summoned by me, to shew cause why an order should not be made upon them for a weekly allowance to the said* A. M. *for herself and her said children, pursuant to the directions of the statute in that case made and provided, but have not shewn to me any sufficient cause why such order should not be made. I do therefore hereby order you to pay unto the said* A. M. *out of the rates for the relief of the poor of your said parish, the following weekly allowance for the support of herself and her said children, according to the usual and ordinary price of labour in husbandry within the said county; that is to say, the sum of* ——— *for each of the said children, and the sum of* ——— *for the said* A. M., *the first payment of the said weekly allowance to be made on the* —— *instant, and the same to be continued until you shall be ordered to forbear the said allowance, which said weekly sum is to be reimbursed to you by the said overseers of the poor of the parish of* ——— *aforesaid, upon your producing to them my certificate of this order. Given under my hand and seal the* ——— *day of* ———, *one thousand eight hundred and* ———.

No. XI.

No. XI. Form of Order of Maintenance where the Balloted Man serves for any Parish in a different County from that in which his Family resides, under the 15th sect. of stat. 43 *G.* 3. *c.* 47.

———shire } To the overseers of the poor of the parish of ——— in the said county of ———.

WHEREAS complaint upon oath hath been made before me, one of his majesty's justices of the peace in and for the said county, by A. M. (*wife of* B. M.), *now dwelling in your said parish,*

that she is the wife of B. M. *a balloted man serving in the militia of the county of* L——, *now embodied and called out into actual service, for the parish of* —— *in the said county of* L——, *and that she has two children by the said* B. M. *born in wedlock, viz.* C. *a son aged* —— *years, and* D. *a daughter aged* —— *years, now dwelling with her in your said parish, and that she is unable to support herself and her said children; I do therefore hereby order you to pay unto the said* A. M., *out of the rates for the relief the poor of your said parish, the following weekly allowance for the support of herself and her said children, according to the usual and ordinary price of labour in husbandry within the said county of* ——; *that is to say, the sum of* —— *for each of the said children, and he sum of* —— *for the said* A. M.; *the first payment of the said weekly allowance to be made on the* —— *instant, and the same to be continued until you shall be ordered to forbear the said allowance, which said weekly sum is to be reimbursed to you by the treasurer of the said county of* ——, *on production of this order and my certificate thereof. Given under my hand and seal the* —— *day of* —— *one thousand eight hundred and* ——.

Form of the Justice's Certificate, referred to in the preceding Order.

——shire. } To the treasurer of the county of ——, and to all others whom it may concern.

I, J. P., *esquire, one of his majesty's justices of the peace in and for the said county of* ——, *do hereby certify that this present day I have executed an order upon the overseers of the poor of the parish of* W. *in the said county of* ——, *to pay weekly the sum of* —— *for the maintenance of* A. M. *now dwelling in the said parish of* W., *wife of* B. M. *a private militia-man in actual service, in the militia of the county of* L., *as a balloted man for the parish of* ——, *in the said county of* L. *And also to pay the weekly sum of* —— *for the maintenance of each of her children born in wedlock* (viz.) C. *a son aged* —— *years, and* D. *a daughter aged* —— *years, now also dwelling in the said parish of* W. *Given under my hand and seal the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——.

No. XII.

No. XII.

FORMS of Accounts for Allowances to the Clerk of the General and Subdivision Meetings, pursuant to stat. 5 G. 4. c. 33. § 26., made out by and to be transmitted to the Secretary at War.

County of ——————
—————— Meetings of ——————
Clerk —————— residing at ——————
From the 10th of *October*, 18—, to the 9th of *October*, 18—.

(No. 1.) ACCOUNT of Attendance at several Meetings of the Deputy-Lieutenants of the —————— and Expences incurred, and Payments made, under an Act of Parliament passed in the 42d Year of the Reign of King *George* 3. Cap. 90., and other Acts relating to the Militia Force of *England* and *Wales*.

Date of the Meeting.	Attendance at the General or Subdivision Meeting. Description of the Business for which the Meeting was convened.	Act of Parliament and specific clause thereof having reference to the business of the Meeting.	Amount.		
			£.	s.	d.
	Total carried to the Recapitulation ... £				

(No. 2.) STATEMENT of further Allowances for Expences and Trouble in amending the Returns, &c. and other Business connected therewith, as defined in the several Acts of Parliament relating to the Militia of *England* and *Wales*.

Date.	Description of Business.	Act of Parliament and clause thereof under which the duty was performed.	Amount.		
			£.	s.	d.
	Total carried to the Recapitulation .. £				

(No. 3.) Statement of contingent and other unavoidable Expences, actually and necessarily incurred, in carrying into Execution the several Acts of Parliament relating to the Militia Force of *England* and *Wales*.

Date on which the Payment was made.	Number of the Voucher.	Description of Charge.	Amount. £.	s.	d.
		Total carried to the Recapitulation ... £			

N. B. Charges for special contingent expences are invariably to be supported by the receipt of the persons to whom the sums have been paid.

MEETINGS OF THE

Recapitulation of the several totals in the foregoing Account.	Total Amount. £.	s.	d.
No. 1. Total Amount for Attendance at the several Meetings of the Deputy Lieutenants			
2. Total Amount of further Allowances, &c...			
3. Total Amount of contingent or other Expences			
Total Amount of Remuneration recommended £			

CERTIFICATE.

I DO hereby certify that my sureties for the due execution of the trusts reposed in me as clerk of the ——— meetings of ——— are now residing at the places stated against their names, and that I was appointed to the clerkship of ——— on the ———.

Names of Sureties.	*Residences.*
——— ———	———
——— ———	———

Dated at ——— *this* ——— *day of* ———, 18——.

——— *signature of the clerk.*

This certificate is invariably to be filled up by those clerks of subdivision meetings who have been appointed since the 2d *July*, 1813, and by those whose appointments bear date prior to that period, as far as regards the date of appointment only.

Certificate of the Deputy Lieutenants.

WE, the undersigned deputy lieutenants, assembled at a —— meeting of lieutenancy, for the ——, held this —— day of —— 18 ——, do hereby certify, upon honour, that the foregoing account is correct, in regard to the several items therein stated, and we do approve the same, and recommend that the amount, viz. —— may be paid to the person interested.

—— ——
—— —— } Signatures of the Deputy Lieutenants.
—— ——

Confirmation of the Deputy Lieutenants in General Meeting.

WE, the deputy lieutenants of the county of ——, whose names are hereunto subscribed, assembled at a general meeting of his majesty's lieutenancy for the said county, holden this day and year hereunder written, do hereby confirm the foregoing approval and recommendation of the sum of ——, being the amount of charges which we consider reasonable and proper for the transaction of business under the several acts of parliament relating to the militia force of England *and* Wales.

Dated at —— this —— day of ——, in the year of our Lord, 18——.

—— ——
—— —— } Signatures of the Lord Lieutenant
—— —— } or Deputy Lieutenants, assembled
—— —— } at a General Meeting of Lieu-
—— —— } tenancy.

§ III. Annual Training Act.

The circumstances which called for the adoption of the measures resorted to for the defence of the kingdom by enabling H. M. annually to train a proportion of his subjects, and raising a local militia force, having ceased to exist, and the execution of the several acts passed for those purposes being consequently suspended, it is considered unnecessary to detail the powers for carrying them into effect, and the principal provisions only of those statutes, will therefore be shortly stated or referred to.

46 G. 3. c. 90. The act to be executed by the persons authorised to carry the militia laws into effect.

Stat 46 *G.* 3. *c.* 90. § 1. for enabling H. M. annually to train and exercise a proportion of his subjects in *England*, is directed to be carried into execution by the lieutenants of counties, deputy-lieutenants, justices, constables and other persons mentioned in stat. 42 *G.* 3. *c.* 90. with the same powers and authorities as are given to them by that act.

(1.) Number to be raised, and the Apportionment.

By stat. 46 *G.* 3. *c.* 90. § 4. H. M. on returns now or hereafter made of persons liable to serve in the militia, may direct his privy council to apportion any number not exceeding 200,000 among the several counties, according to the number returned, and to direct the apportioned numbers to be transmitted to the respective lieutenants; notice thereof to be thrice printed in the *London Gazette*. The lieutenants shall immediately after the last publication, summon general aad subdivision meetings of lieutenancy in their respective counties. At the general meetings the number fixed for the county shall be apportioned among the hundreds; at the subdivision meetings the number apportioned for the hundred shall be apportioned amongst its parishes in the manner used for the militia.

46 G. 3. c. 90. On returns of persons liable to serve in militia, privy council shall apportion 200,000 thereof among the counties to be trained under this act.

(2.) Ballot.

By § 9. and 12. H. M. may direct any number not exceeding 200,000 in the whole, and in such proportions as shall have been fixed for the several counties, to be forthwith balloted and enrolled out of the lists of persons liable to serve in the militia, and from the persons liable to serve under this act; and also from time to time may direct that the whole number so balloted and enrolled in any county or part thereof, or any proportion thereof, to be taken either by ballot, or according to the order in which the names shall have been balloted, or according to any classes with respect to age, marriage, or number of children, shall be trained and exercised according to this act; and by a warrant to that effect under H. M.'s royal sign manual to the lieutenant, such ballot shall take place, and the lieutenant shall forthwith by precept under his hand and seal, summon subdivision meetings for making the same, at which the names of the persons liable to be balloted, shall publicly, and in the presence of such magistrates, churchwardens, overseers, and constables as choose to attend, be called over from the lists, and put into the boxes or glasses for balloting, and be publicly drawn out, and the names drawn be publicly called over and entered in a book by the clerks of the subdivision, or persons appointed by them, or the deputy-lieutenants for that purpose.

H. M. may order the whole or any part of the number apportioned to be balloted, enrolled, and trained.

Manner of balloting.

By § 13. The deputy-lieutenants shall appoint days and places for meetings for hearing appeals against such ballots: the clerks of the subdivision meetings at which the ballots took place, shall within three days transmit to the constables or other officers of the parishes within their subdivision, the names of the persons balloted therein respectively, who shall give notice to every such person, together with notice of the days for appeal against such ballots; and the deputy-lieutenants are required on hearing such appeals, to amend the lists, if necessary, and ordered by H. M., and to proceed to fresh ballots, until the full number required be enrolled; and the names of all who have volunteered under this act; and of all who have been balloted and have not appealed, or who on appeal have not been struck out, shall be entered on a roll provided by the clerks of the subdivison meetings for that purpose; and they shall within ten days transmit abstracts of such roll, containing

Appeals.

46 G.3. c.90. the names of those enrolled in the respective parishes to the constables thereof.

(3.) Volunteers.

Volunteers may offer to serve under this act, in which case no ballot, or a ballot only for the deficiency shall take place.

By § 10. In all cases where such ballot shall be so directed, and any persons between eighteen and thirty years of age, and fit for military service, shall voluntarily enrol themselves in any parish, and shall agree to be trained and exercised, if they shall amount to the number required to be enrolled by ballot in any such parish, then no ballot shall be therein; if they do not amount to the number so required there, then the deficiency only shall be balloted for in that parish.

H. M. may allow pay or bounty to volunteers for additional training, &c.

By § 11. H. M. may order that any volunteers under this act shall receive 1*s*. *per* day for any additional number of days of training and exercise, not exceeding twenty-four days, in addition to the twenty-four days required by this act; or he may direct that such volunteers training and exercising under this act, for any number of days not less than twenty-four, shall receive at their expiration any sum not exceeding 10*s*. in addition to the pay of 1*s*. *per* day in the said schedule mentioned.

(4.) Exemptions.

Certain persons, though exempt from the militia, shall not be exempt from being balloted and trained under this act.

By § 5. No articled clerk nor apprentice, nor any person mustered, trained, or doing duty in any of H. M.'s docks or dock-yards, for the service thereof, or employed and mustered in H. M.'s service in the Tower of *London*, *Woolwich Warren*, the several gunwharfs at *Portsmouth*, or at the several powder mills, powder magazines, or other storehouses belonging to H. M., under the direction of the board of ordnance, nor any person being free of the company of watermen of the river *Thames*, nor any poor man who has more than one child born in wedlock, nor any person serving by substitute in the militia, or under any act for raising any additional force for the defence of the realm, shall be by reason thereof exempt from this act, although he may be exempt from serving in the militia.

Exemptions of licensed teachers and medical men.

By § 6. No licensed teacher of any separate congregation in holy orders, or pretended holy orders, and not carrying on any other trade, or exercising any other occupation for his livelihood, except that of a schoolmaster, nor any medical man actually practising as such, and being a housekeeper, shall be liable under this act, so long only as they respectively continue within any of the descriptions aforesaid.

Persons actually trained not liable to be balloted for again for two years.

By § 15. No person who shall have been enrolled for training, exercising, and service under this act, and who shall have been so trained, shall be balloted for again during the two succeeding years after the expiration of the year in which he shall have been so enrolled, trained, and exercised, such years being to be reckoned from the 1st *Nov.* in one year to the 1st *Nov.* in the succeeding year.

Penalty on persons balloted not appearing.

By § 16. If any volunteer or person so balloted and enrolled shall refuse or neglect to appear at such time and place as shall be appointed, and to sign the regulations in the schedule to this act annexed, he shall forfeit 10*l.*; or if he be not a person having an income amounting in the whole to 100*l.*, the sum of 5*l.*; the payment of which shall exempt such person from training and exer-

cise for that year, and no longer, but he shall be liable to ballot or fine in each succeeding year. 46 G.3. c.90.

By § 17. Every person claiming to be exempted upon payment of the 5*l.* instead of 10*l.*; and every person claiming any reduction of any fine for absence from training and exercising, by reason of not having any income of 150*l.* or 50*l.* *per ann.* respectively, shall make and sign a declaration of the amount of his income before a deputy-lieutenant, or justice, or magistrate, or produce a certificate thereof, allowed by any commissioner under any act relating to the rates and duties arising on property, or to any allowances made on any such rates and duties, within twelve months previous to the production of such certificate.

Persons claiming exemption on payment of the smaller fine, &c. shall sign a declaration of their income.

By § 18. If any person, either before or after being so balloted, shall have enrolled or shall enrol himself as a volunteer in any corps which shall at that time have been accepted by H. M., and shall produce a certificate of being so enrolled, and of being properly clothed, armed, and equipped, according to the regulations of the corps, from the commanding officer for the time being, he shall be struck out of the enrolment under this act, and be exempt from this act, so long as he shall continue a member of such corps.

Balloted persons entering into volunteer corps shall be exempt from ballot, &c.

§ 23. Any two deputy-lieutenants, or any deputy-lieutenant and justice, on certificate of any practising physician, surgeon, or apothecary, that any person enrolled is by illness, or bodily infirmity, or debility, unable, may strike such person out of the enrolment, and excuse him from fine and further service under this act as long as the inability continues.

Illness.

(5.) Special Constables and Officers.

§ 28. The lieutenant or deputy-lieutenants at any general meeting, and the deputy-lieutenants within their respective subdivisions may, when they judge it expedient, appoint from those who under this act would be exempt from enrollment, such a number of those usually resident in any parish, who may be willing to undertake the duty of constables under this act, to be special constables for all or any of its provisions within such parish as they shall think fit, or appoint any to act as constables instead of Quakers, according to any militia act; and the deputy-lieutenants shall cause the names of such special constables to be given to the chief constable, or other proper officer of the district, and such special constable shall do all things in this act contained, as any other constables may.

Special constables may be appointed out of persons exempt from military service.

(6.) Training, &c. and calling out the Men.

By stat. 46 *G.* 3. *c.*90. § 25. & 26. Where H. M. shall have directed that any persons enrolled shall be trained and exercised under this act, the lieutenant to whom the warrant shall be directed, shall require the deputy-lieutenants in their respective subdivisions, to fix proper times and places of training and exercising, and to cause public notice thereof to be given. The number of days of exercise and training to be no more than twenty-four in the year, and no person to go more than five miles from his place of residence.

H. M. may order persons to be trained, and regulate time and place of exercise.

16 G 3. c.90.

Officers. By stat. 46 *G.* 3. *c.*90. § 33. H. M. may at any time appoint any general or other officers, and appoint or cause to be appointed any serjeants and other non-commissioned officers, for the commanding, training, and exercising under this act.

On apprehension of immediate invasion, H. M. may embody persons enrolled. By § 34. H. M. on apprehension of immediate invasion may order all enrolled under this act, or any class or proportion of them, to be embodied within their respective counties, for any time not exceeding twenty-one days, but not to be marched out of the county excepting in the case of actual invasion, or of the appearance of an enemy in force on the coast. Provided, that if no officers be appointed by H. M., or till appointed, all persons so enrolled shall be under the command of their lieutenants or deputy-lieutenants, or of officers appointed by them.

And in case of actual invasion, &c. they may be regimented. By § 35. In case of actual invasion, or appearance of an enemy in force upon the coast, H. M. may, by order in council, or by proclamation, draw out and embody or assemble, all or any of those who have been balloted and enrolled, to serve for the then year, or the preceding year, and attach any of them to the regulars, or to the militia belonging to their respective counties, if it can conveniently be done; or if it cannot, then in any other regiment serving in *G. B.*, or cause them to be formed into new regiments, or otherwise to employ them in military service as occasion shall require; and by § 38. may issue provisional orders for those purposes, and direct them to be led into any part of *G. B.* for the repelling or prevention of such invasion, or for the suppression of any rebellion or insurrection arising and existing at such time; and from the time of being so drawn out until disembodied, they shall, officers and privates, be subject to the mutiny act, and articles of war, and the act for paying and quartering the army.

Oath to be taken. By § 36. Every person so called out shall, upon repairing to the place of assembly, take the following oath:—

I A. B. *do sincerely promise and swear that I will be faithful and bear true allegiance to his majesty king* ———, *and that I will faithfully serve his majesty within* Great Britain *so long as I shall be required so to do, under the provisions of an act for enabling his majesty to train and exercise a proportion of his subjects, and to provide for the defence of the realm.*

So help me God.

Not to serve out of G. B. § 37. No person so drawn out shall be compelled to serve out of *G. B.*, nor be kept embodied for more than one month after repelling the enemy, or driving him from the coast, or the suppression of any such rebellion or insurrection.

Persons enrolled not appearing pursuant to order or signal shall be deemed deserters. § 40. If any person ordered to be drawn out, assembled, and embodied, being resident in the county or district for which he is enrolled, and not under any infirmity incapacitating him from service, and not prevented by inevitable accident or necessity, shall not appear and march in pursuance of such order, or of the signals of alarm to be given under it, he shall be liable as a deserter.

(7.) Pay, &c.

When drawn out, entitled to §42. On and from the day of such drawing out, assembling, and embodying, the officers and men shall be entitled to the same

pay as the officers and men of H. M.'s other infantry forces; and if any non-commissioned officer, drummer, or private man be maimed or wounded in actual service, he shall be entitled to the benefit of *Chelsea* hospital the same as those of the other forces.

46 G.3. c.90. — pay of the regulars, and Chelsea Hospital.

§ 44. After the expulsion of the enemy, and the suppression of any such rebellion or insurrection, to be notified by H. M.'s proclamation, all such persons shall be returned to their respective parishes, and H. M. may direct one guinea to be paid, under the direction of the general, or other superior officer, under whose command such men may be, to every person so permitted to return home, over the usual rate of pay to which he shall be entitled.

On defeat and expulsion of enemy, &c. one guinea shall be paid to each man returning home.

(8). Penalties.

§ 53. All fines, penalties, and forfeitures by this act imposed, which shall exceed 15*l.*, shall be recovered by action of debt, bill, plaint, or information, at the suit of H. M.'s attorney-general, or at the suit of any person appointed to sue for the same by any lieutenant or deputy-lieutenants, or vice-lieutenants acting for any lieutenant in any of H. M.'s courts of record at *Westminster;* or the courts of great session in the principality of *Wales*, or the courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, (as the case shall require) wherein no essoin, privilege, protection, wager of law, or more than one imparlance shall be allowed.

Recovery of penalties above 15l. in courts of record.

§ 54. Any justice or deputy-lieutenant residing near the place where any offence shall be committed against this act, which subjects the offender to any penalty not exceeding 15*l.*, may hear and determine the same at any time within six months after the offence committed, subject to an appeal by any person aggrieved by the judgment of such justice, to the next general quarter sessions.

And not exceeding 15l. before some justice or deputy-lieutenant, subject to appeal to the sessions.

By § 57. Provided, that it shall be lawful for any justice or deputy-lieutenant to mitigate and lessen any such penalty in such manner as he shall see fit (reasonable costs, and charges of the officers and informers as well in making the discovery as in prosecuting the same, being always allowed over and above such mitigation) so as such mitigation do not reduce the penalty to less than one moiety of the penalty incurred above the said costs and charges.

Penalties may be mitigated to one half.

§ 59. All fines, penalties, and forfeitures incurred, paid, or levied, under any of the provisions of this act, shall be applied under any general or particular order of one of H. M.'s principal secretaries of state in the discharge of any expenses of any training or exercising under this act, within the county, riding, or place where the same shall arise, or any incidental expenses attending the execution of this act within such county.

Penalties shall be applied to expenses of training, &c.

By § 22. All persons enrolled under this act, and all serjeants and constables shall be subject and liable to all the rules, regulations, fines, penalties, and forfeitures in the schedule annexed contained, in relation to persons enrolled, and to serjeants and constables in like manner as if all such rules had been separately

Persons enrolled shall be subject to rules and regulations in schedule.

46 G. 3. c. 90. enacted in the body of this act; and all such fines may be recovered under this act as if inserted in the body thereof.

§ 49. This act not to extend to the city of *London*.

Schedule to which this Act refers.

Rules and Regulations relating to Persons enrolled under an Act for the Defence of the Realm.

All persons trained under this act to be allowed pay for twenty-four days at 1*s*. *per* day.

To attend at the places and times fixed for exercise, and obey all orders of officers or serjeants relating to training and exercising, during times of exercise; to take due care of arms; and to deposit them where required.

Fines for Non-attendance.

Forfeiture of pay, and 10*s*. for every day short of eight days in each four months, if days shall be so appointed; or for every day short of twenty-four days, if days shall be appointed yearly.

Persons not having or receiving any annual sums of money, profits, gains, allowance, or other income, amounting in the whole to 150*l*. *per annum*, to forfeit 5*s*. instead of 10*s*., for each of such absences.

Persons not having any annual sum of money, profits, gains, allowances, or other income, amounting in the whole to 50*l*. *per annum*, to forfeit 2*s*. instead of 10*s*. for each of such absences.

Persons excused from poor rates, or being part of the family of any persons excused from poor rates by reason of poverty, and who are by reason thereof exempt from the payment of such rates and duties, to forfeit 2*s*. instead of 10*s*. for each of such absences.

Persons prevented by illness certified by physician, surgeon, or apothecary actually practising, or clergyman and constable, to the satisfaction of deputy-lieutenant, or justice, or magistrate, to forfeit only pay.

Persons absent on business, and making good days on any succeeding period, to have fines returned for such days, by order of deputy-lieutenant or justice, on certificate of serjeant and constable.

Persons removing during the year from the parish or place of residence to have a certificate of exercise up to the time of removal from the officer or serjeant, or in the absence of any officer or serjeant, the constable or other peace officer of the parish or place which they are hereby required to give on demand thereof without fee or reward.

On production of such certificate to any deputy lieutenant or justice of the division, or to the officer, serjeant, or constable of the parish or place to which such person shall remove, such person to be entered as if balloted in such parish or place, and to be there trained and exercised, and to have credit for the days of exercise contained in his certificate.

Producing of such certificate, and conforming to regulations of this act in parish or place of subsequent residence, to exempt from fines for non-attendance in the first parish or place. 46 G.3. c. 90.

During absence from parish, certificate of training and exercise in any other parish to be received, and to exempt from fines in parish of enrolment for those days.

Persons enrolled, and afterwards leaving *G. B.*, and giving notice to constable, discharged from penalties for not training and exercising so long as he shall continue out of *G. B.*

Persons absent for temporary purposes only, from the parish of enrolment, and training and exercising, who shall on return prove to satisfaction of any deputy-lieutenant, or justice, or magistrate, that he could not train and exercise during such absence, either by reason of travelling or not continuing a sufficient length of time in one place, or there being no training and exercising in the parishes or places in which he shall have been during such absence, may, by such deputy-lieutenant, or justice, or magistrate, be discharged from fines during such absence.

For Misconduct.

For irregular conduct, or not behaving in an orderly manner, or disobeying the lawful commands of any officer or serjeant commanding or training, or exercising, to forfeit pay of the day, or pay of the day and any sum not exceeding 10*s.* at the discretion of any justice, magistrate, or deputy-lieutenant.

Officer or serjeant empowered to deliver any such person into the custody of the constable, to be by him taken before a justice or deputy-lieutenant, so that such person shall not be kept in custody for any night previous to being taken before a magistrate.

All fines may be levied by distress under the act; and, if no distress, offender may be imprisoned for any period not exceeding two days for non-payment of any fine not exceeding 5*s.*, and not exceeding five days for any fine not exceeding 20*s.*, in addition to any adjudged imprisonment.

Muster rolls to be kept by serjeant and constables, to be returned to clerk of subdivision meetings, and to commanding officer of district.

Roll to be called at the hour of meeting.

Persons coming after roll-call not to be entitled to be inserted in muster.

Serjeants and constables to give certificate, on demand, to every person belonging to any other parish, who shall train and exercise, of his having trained and exercised according to the act, and of the number of days, specifying the days on which he shall have so exercised.

Serjeant or constable taking any money or bribe, or gift of any sort, for any false muster, or for the training or exercising of any men, or for any certificate, to be fined 10*l.* and treble the money or value of gift received, and imprisoned at discretion of the justice, or deputy-lieutenant, not exceeding two months (to be recovered and applied as any penalty or forfeiture under 15*l.* may be recovered under this act.)

46 G. 3. c. 90. Fines to be collected by constable, or any overseer of the poor, and to be paid to overseer of the poor, and the account kept by them of amount.

To be subject to distribution according to orders, under this act.

Deputy-lieutenant may, with approbation of lieutenant, and H. M., establish rewards for skill in firing at target with ball, under any regulation to be approved of by general officer of the district, and lieutenant, to be defrayed out of fines.

§ IV. *LOCAL MILITIA.*

[43 G. 3. c. 47.—52 G. 3. c. 38.—c. 116.—53 G. 3. c. 28.—56 G. 3. c. 38.]

52 G. 3. c. 38. By stat. 52 *G.* 3. *c.* 38. § 1. for amending the laws relating to the local militia in *England*, stats. 48 *G.* 3. *c.* 111., 49 *G.* 3. *c.* 40., 49 *G.* 3. *c.* 129., and 50 *G.* 3. *c.* 25., so far as related to the *Local Militia*, were respectively repealed, and that force is subjected to the regulations of this act.

(1.) Appointment and Qualification of Officers.

Lieutenants shall appoint officers.

§ 2. The several lieutenants of counties, or in their absence the vice-lieutenant, or any three deputy-lieutenants duly authorised by H. M., shall from time to time appoint such persons as they shall think fit, qualified as hereinafter directed, and living within their respective counties, or within some adjacent counties, to be colonels and other officers of the force to be raised under this act, and shall certify to H. M. the names and ranks of all such officers; and in case H. M. shall, within fourteen days after such certificate shall have been laid before him, signify his disapprobation of any such, the said lieutenants shall not grant a commission to any person so disapproved, but commissions shall be granted to such who shall not be disapproved by H. M.; and the officers so appointed shall rank with the officers of H. M.'s regular militia as youngest of their rank: provided, that no higher rank shall be given in any regiment of local militia than that of lieutenant-colonel commandant, except where the commandant shall have served with the rank of colonel in H. M.'s regular forces, or regular or supplementary militia or fencibles, or be the lieutenant or vice-lieutenant of any county.

Rank of officers.

Lieutenant colonels commandant to command lieutenant-colonels.

§ 3. All officers of local militia holding the rank of lieutenant-colonel commandant, shall take rank of all other lieutenant-colonels serving in the said local militia, and officers of the local militia shall rank with the officers of yeomanry and volunteer corps, according to the dates of their respective commissions: provided, that every officer of local militia, who shall have held any commission in any volunteer corps, at the time of his becoming an officer of the local militia, shall be entitled to rank with the officers of yeomanry and volunteer corps, according to the date of his commission, of the same rank in the volunteers.

Rank of officers who have served in regular or supplementary militia.

§ 4. Any person who shall have held the rank of colonel of any regiment or battalion of regular or supplementary militia, and who may be appointed to the command of any regiment of local militia, shall rank as colonel, according to the date of his commission, in the local militia; and every lieutenant or vice-lieu-

tenant of any county, who shall be appointed to the command of any regiment of local militia shall rank as colonel, according to the date of his commission, in the local militia; and every person who shall have served in the regular or supplementary militia as a commissioned officer, and by reason of the reduction of such militia shall have ceased to hold such rank, shall, if appointed to a like commission in the local militia, rank according to the date of his first commission: provided, that no officer holding the rank of colonel in the local militia, shall be entitled to or receive any greater pay or emolument than that of lieutenant-colonel commandant. 52 G. 3. c. 38.

§ 6. The lieutenant of every county shall have the chief command of the local militia within the county, to which he is appointed. Lieutenant to have chief command of local militia.

§ 7. to 12. inclusive, relate to the qualification of officers. Qualifications of officers.

§ 13. H. M. may from time to time, as he shall think fit, signify his pleasure to his lieutenant of any county, to displace all or any officers in the local militia, and thereupon H. M.'s respective lieutenants shall forthwith displace such officers, and appoint others within the same county, under the like provisions and restrictions, to serve in their stead. H. M. may direct county-lieutenants to displace officers.

(2.) The Quotas, &c.

By § 14. H. M. may order and direct, that a number of private men not exceeding the numbers herein specified for each county respectively, shall be enrolled to serve in the local militia, (viz.) Numbers to serve for the different counties.

County of *Bedford*	1268
Berks	2244
Bucks	2396
Cambridge	1924
Chester, with the city and county of the city of *Chester*	3540
Cornwall	2588
Cumberland	2460
Derby	3756
Devon, with *Exeter*	6048
Dorset, with *Pool*	1644
Durham	1968
Essex	4976
Gloucester, with the city and county of the city of *Gloucester* and the city and county of the city of *Bristol*	4652
Hereford	2080
Hertford	1920
Huntingdon	636
Kent, with *Canterbury*	5184
Lancaster	9756
Leicester	2572
Lincoln, with the city and county of the city of *Lincoln*	5472
Middlesex (exclusive of the Tower division commonly called *The Tower Hamlets*)	12,152
Monmouth	1120
Norfolk, with the city and county of the city of *Norwich*	4836
Northampton	2896
Northumberland, with the town and county of the town of	

52 G.3. c.38.

Newcastle-upon-Tyne, and the town of *Berwick-upon-Tweed*	2696
Nottingham, with the town and county of the town of *Nottingham*	2256
Oxford	2412
Rutland	332
Salop	3964
Somerset	6224
Southampton, with the town and county of the town of *Southampton*	3400
Stafford, with *Lichfield*	4532
Suffolk	4168
Surrey	5344
Sussex	3212
Warwick, with *Coventry*	3412
Westmorland	972
Worcester, with the city and county of the city of *Worcester*	2464
Wilts	3668
West Riding of the county of *York*, with the city and county of the city of *York*	9716
North Riding	3644
East Riding, with *Kingston-upon-Hull*	2256
Anglesea	512
Brecknock	816
Cardigan	976
Caermarthen, with the county borough of *Caermarthen*	1620
Caernarvon	512
Denbigh	1376
Flint	804
Glamorgan	1612
Merioneth	484
Montgomery	1116
Pembroke, with *Haverford West*	804
Radnor	560

H. M. may order counties to be divided.

§ 72. It shall be lawful for H. M., in any case in which more than one regiment is ordered to be raised in any county, to direct the division of such county, for the purposes of this act, into such number of divisions as there are regiments to be raised, regard being had to the number of persons liable to serve and the establishment of each regiment, and all other circumstances of local convenience; and each of such divisions shall supply all vacancies arising in the regiments, respectively belonging thereto; and such divisions and all apportionments made in pursuance thereof may be from time to time varied as occasion may require.

Or (unless others were provided) regulate the militia as to him shall seem meet.

§ 73. H. M., where no special provision is made by this act, may cause the local militia of any county to be formed and regulated as to him shall seem meet, in regard to the number of regiments, conforming in every case, as near as the proportions of men will admit, to the establishment in this act particularly directed.

(3.) Apportionment, Ballot and Enrolment, Volunteers, and Insurance.

By stat. 52 *G.* 3. *c.* 38. § 21. All such powers, provisions, rules, regulations, clauses, matters, and things contained in stat. 42 *G.* 3. *c.* 90., 46 *G.* 3. *c.* 91., and 49 *G.* 3. *c.* 82., or in any other act relating to the militia, as relate to the appointing and holding general and subdivision meetings of lieutenancy, or to the making out lists from which to ballot, or to the mode of balloting, shall, as far as the same are applicable, and can be applied to and for the purposes of carrying this act into execution, and are not hereby altered, varied, or repealed, be put in force with respect to the local militia, in as ample amanner as if re-enacted in this act. 52 G. 3. c. 38. Powers of militia acts, extended to this act.

§ 22. The subdivision clerks shall give notice to the deputy-lieutenants and commanding officer of local militia raised within the subdivision, of all meetings, and transmit to such officer lists of the men enrolled.

§ 23. The men to be raised under this act shall be balloted out of the persons between the ages of eighteen and thirty, returned in the lists for the raising of the militia; and H. M. may order and direct the making out any new lists, and in such classes as to age or otherwise, and in such forms as may be deemed expedient for the purpose of this act. Men to be balloted from militia lists.

And by stat. 53 *G.* 3. *c.* 28. § 8. No return, or list, or ballot, shall be deemed irregular, by reason of any mistake in the christian name of the person returned and balloted. 53 G. 3. c. 28.

By stat. 52 *G.* 3. *c.* 38. § 24. On making out or amending of any lists after the passing of this act, of persons fit to serve in the local militia, every person who shall wilfully neglect to appeal within the time appointed for that purpose, shall forfeit for every such offence not exceeding 5*l.* nor less than 20*s.*, at the discretion of any two deputy-lieutenants or justices, and on non-payment be imprisoned, at the discretion of any two deputy-lieutenants or justices as aforesaid, for any time not exceeding fourteen days. 52 G. 3. c. 38. Persons neglecting to appeal, subject to the penalty.

§ 25. No person shall be appointed to act as a special constable to assist in the execution of this act, who shall not be above the age of thirty years.

§ 26. & 27. The deputy-lieutenants within any subdivision may require the attendance of constables, who are to be subject to a penalty for non-appearance or neglect of duty; and two justices may appoint deputies for such constables or officers as may be Quakers.

§ 28. Two or more places may be added together, or any extra-parochial place to any parish, so as to make the ballot as equal as possible.

§ 29. Rates made for any parish and extra-parochial place jointly, shall be distinctly made for the purposes of this act, and for no other purpose.

§ 30. Subdivision clerks shall transmit to the clerk of the general meeting copies of the subdivision rolls within fourteen days after every meeting, under the penalty of 20*l.*

§ 31. The lieutenant or vice-lieutenant, with any three deputy-lieutenants, or (on the death or removal, or in the absence of the lieutenant or vice-lieutenant), any five deputy-lieutenants at a ge-

52 G. 3. c. 38. neral meeting, may allow the appointed subdivisions, and the allotments of the number of men therein.

§ 32. The deputy-lieutenants at their second subdivision meeting are to apoint the number to serve for each parish, and to hold another meeting within three weeks for balloting, and another meeting within three weeks after the ballot for the enrolment: And by § 48. & 49. the deputy-lieutenants of any county may make any new appointments for any divisions or parishes, where the quotas thereof shall not be in proportion to the number liable to serve therein, or an alteration shall have taken place in the number of effective yeomen or volunteers serving for such division or parishes. And they may also cause new lists to be made where any shall have been lost or destroyed.

53 G. 3. c. 28. And stat. 53 *G.* 3. *c.* 28. § 9. directs the mode of making apportionments when there are effective yeomanry or volunteers in any parish.

56 G. 3. c. 38. Ballot may be suspended. By stat. 56 *G.* 3. *c.* 38. it shall be lawful for H. M., by any order in council, to direct that no ballot or enrolment for the local militia shall take place, but that the same shall continue suspended for the period specified in such order; and from time to time, by any like order in council, to continue such suspension, so long as H. M. shall deem it expedient.

52 G. 3. c. 38. Persons chosen by ballot to take the following By stat. 52 *G.* 3. *c.* 38. § 32. And every person chosen by ballot, if on examination found able and fit for the service, and approved of in manner hereinafter directed, shall then and there take the following oath; that is to say,

Oath. I A. B. *do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty king* George, *and that I will faithfully serve in the local militia of* —— *within* Great Britain, *for the defence of the same, during the time of four years, for which I am enrolled, unless I shall be sooner discharged.*

and shall be then and there enrolled to serve in the local militia of such county as a private local militia-man for four years.

Men before enrolment shall be examined upon oath as to their residence, &c. § 33. Every man, before such enrolment, shall be examined upon oath before the deputy-lieutenants, as to his residence, age, and family, according to the form in the schedule marked (B); and if any person shall refuse to be so examined, he may, at the discretion of any one deputy-lieutenant or justice, be imprisoned for (not exceeding) one week, and shall notwithstanding be liable to be enrolled, if he shall appear to be a fit and proper person to be so enrolled.

Persons insuring subject to penalty of 50l. § 34. If any person shall insure, or take or agree to take any money for the insurance of, or be any ways concerned in any company, society, partnership, club, or office, for the insurance of any person or persons, or for the insuring or indemnifying each other against, or for the paying any money for or towards the discharging of any fine or penalty, for any person or persons who may be balloted to serve in the local militia; or shall pay or engage to pay any sum or sums of money to any volunteer to serve in discharge of any county, division, or parish, beyond the sum of two guineas to be paid to such volunteer as hereinafter directed, every such person shall forfeit for every such offence the sum of fifty pounds.

§ 35. And no person balloted to serve in the local militia shall be allowed to find or provide any substitute to serve in his stead. 52 G. 3. c. 38.

No person balloted allowed to find a substitute.

Volunteers.

§ 36. If the churchwardens or overseers of the poor of any parish, shall, with the consent of the inhabitants taken at a vestry, or at any other meeting to be holden for that purpose, for the calling of which vestry or meeting three days' public notice shall be given, specifying the cause of calling the same, provide and produce at any subdivision meeting for choosing the local militia-men by ballot, any volunteers being of the same county, or of some adjoining parish or place, who shall be examined and approved, as hereinafter mentioned, such volunteers shall be then sworn in and enrolled to serve for such term, and on the same conditions, as in case of persons balloted; and the deputy-lieutenants shall cause only such number of persons to be chosen by ballot out of the list returned for such parish, as shall be then wanted to make up the whole number to serve for the same; and if any such churchwardens or overseers shall give to such volunteers any sums of money not exceeding two guineas each, they may make a rate upon the inhabitants of such parish, according to the poor's rate, which rate (being approved by any justice of the peace) it shall be lawful for them to collect and to reimburse themselves such sums of money as they shall have paid to such volunteers, and the overplus (if any) shall be applied as part of the poor's rate; but no person who shall be then serving in the local militia, nor any person serving either personally, or by substitute in the regular militia, shall be liable to pay any such rate: provided, that if any person shall think himself aggrieved by any such rate as aforesaid, such person may appeal to the next general or quarter sessions, as in the case of appeals against rates for the relief of the poor.

No ballot to take place where persons shall voluntarily enrol themselves.

Certain persons exempt from service.

§ 37. In all cases in which a ballot shall be directed under this act for the local militia, and any persons between the ages of eighteen and thirty-five years, of the height of five feet two inches and upwards, and fit for military service, and not having more than two children under fourteen years, shall voluntarily enrol themselves to serve according to the provisions of this act, if they shall amount to the number to be enrolled by ballot under any apportionment in any such parish, then no ballot shall take place therein; and if the persons so voluntarily enrolling themselves shall not amount to the number required to be enrolled by ballot in any such parish, then the deficiency only shall be balloted for; and all persons so voluntarily enrolling themselves shall take the oath required by this act to be taken by persons balloted, and shall serve under the same regulations, and be subject to the same provisions as if balloted for under this act: provided, that no seaman or seafaring man shall be enrolled in the local militia as a volunteer.

Lists may be amended, and fresh ballots had.

§ 43. If through the neglect or mistake of any chief constables or other officers, or from any other cause, the full number of men appointed for any subdivision should not be duly enrolled at the meeting appointed for that purpose as before directed, then the deputy-lieutenants shall immediately cause the lists to be amended, and proceed to a fresh ballot, and adjourn their meeting, or appoint other meetings and repeat the amending of the lists as may be necessary for the purposes of this act; and any one deputy-lieutenant or justice may administer the oath to be taken

52 G.3. c.38. by persons to serve in the local militia, and direct the subdivision clerk to enrol the name of every person so having taken the oath and been duly examined and approved, together with the date of the day on which the said oath was so administered to him, in the roll of such subdivision.

§ 50. Quakers or united brethren, on production of certain certificates, are not to be enrolled, but shall be adjudged to pay a proportion of such fines as are by this act imposed on persons balloted and not appearing.

§ 51. Every person liable to serve in the local militia having more than one place of residence shall serve for the county where his name shall have been first inserted in such list as aforesaid.

§ 52. When parishes lie in two or more counties, the inhabitants are to serve in the militia of the county wherein the church belonging to such parish is situated.

§ 53. Any justice may order such costs and charges for levying distress as he shall think reasonable on Quakers refusing to pay the rate made upon them for providing volunteers, not exceeding 10*s.* on each of such Quakers, if no more than two; and 5*s.* on each, if a greater number.

No man to be enrolled until examined and approved by a surgeon.

§ 54. No man shall be approved or enrolled to serve either as a balloted man or volunteer, until he shall have been carefully examined by some surgeon of competent skill, and shall have been declared and reported by such surgeon to be neither ruptured, lame, maimed, nor afflicted with any disorder that may render him unfit to serve, but to be in every respect able and fit for service; and the deputy-lieutenants shall, in all cases, before they proceed to enrol any man for the local militia, cause such examination to be carefully made; and shall require the attendance of any surgeon of any regiment, of the local militia of the county, for which any man is to be enrolled, if any such surgeon is within a reasonable distance, and can conveniently be had, or otherwise require the attendance of any other competent surgeon for that purpose; and a reasonable allowance, not exceeding one guinea, shall be made to the surgeon performing such examination, for every day he shall actually attend for that purpose.

Allowance to be made the surgeon for his attendance.

And by stat. 53 *G.*3. *c.*28. § 15. any balloted man who shall refuse to be examined is to be enrolled.

Deputy-lieutenants to class the men enrolled.

By stat. 52 *G.*3. *c.*38. § 56. The deputy-lieutenants in their several subdivisions shall, as soon as they shall have enrolled the number of men required in their subdivision, divide them into as many classes of the description hereinafter mentioned as shall be found among such men; that is to say, in the first class they shall put all the men having no child or children living; and in the second class, all the men not having any child or children living under the age of fourteen years; and in the third class, all the men having any child or children, one of whom only shall be under the age of fourteen years; and in the last class, all the men not included in any of the former descriptions; and shall forthwith make out a list of such classes, according to the form in the schedule to this act annexed marked (C), and within three days after the completing thereof, the clerk of such subdivision meeting shall transmit to the clerk to the general meetings an exact and true copy of such list, made out in such form as aforesaid, to be by him entered in a book to be kept for that purpose.

4. Exemptions.

By stat. 52 *G.* 3. *c.* 38. § 38. No peer, nor any commissioned officer in the regular militia or in H. M.'s other forces, or in any one of H. M.'s castles or forts, nor any officer on the half pay of the navy, army, or marines, nor any non-commissioned officer or private man serving in the regular militia or in any of H. M.'s other forces, nor any effective member of any corps of yeomanry or volunteers, and duly returned as such, nor any person being a resident member of either of the universities, nor any clergyman, nor any teacher or preacher in holy orders or pretended holy orders, or pretending to holy orders (not carrying on any trade or exercising any other occupation for his livelihood, except that of a schoolmaster), having taken the oaths and made and subscribed the declaration required by law from the teachers or preachers of congregations of dissenting protestants, and being *bonâ fide* the teacher of any congregation whose place of meeting shall have been duly registered at least twelve months previous to the general meeting appointed to meet in *October* for the purposes of this act (*a*); nor any constable or other peace officer not being a special constable; nor any seaman or seafaring man, nor any person mustered, trained, or doing duty, or employed in any of H. M.'s docks or dock yards for the service thereof; or employed or mustered in H. M.'s service in the tower of *London*, *Woolwich Warren*, the several gun wharfs at *Portsmouth*, or at the several powder mills, powder magazines, or other store-houses belonging to H. M., under the direction of the board of ordnance, nor any person being free of the company of watermen of the river *Thames*, nor any poor man who has more than two children born in wedlock, nor any person receiving his education on an eleemosynary foundation, shall be liable to serve in the local militia; and no person having served personally in the regular militia, or provided any substitute, or for whom any substitute has been provided or paid any fine for not serving or finding a substitute in the regular militia, shall be liable to serve in the local militia, until four years after the expiration of his period of service, if he shall have served in person, or six years after the period at which such substitute shall have been enrolled, or four years after having paid any such fine; and no person having paid any fine or upon whom distress has been made for any fine for not serving in the local militia, shall be liable to serve until the expiration of two years from the period of having paid such fine or suffered such distress. **52 G. 3. c. 38. Certain persons exempt from service.**

And by stat. 52 *G.* 3. *c.* 116. Every person who shall have served personally in the local militia during the period for which he may have been liable to serve, shall be exempted from ballot and enrolment in that force for two years from the expiration of his period of service. **52 G. 3. c. 116.**

By stat. 52 *G.* 3. *c.* 38. § 39. All persons hereafter enrolled to serve in the local militia, shall have exemption from service in the regular militia, and shall not be liable to be balloted to serve in the regular militia for two years from the expiration of their period of service in the said local militia: provided that no person shall be entitled **Persons enrolled in the local militia exempt from service in the regular militia for two years.**

(*a*) *Vide* also stat. 52 *G.* 3. *c.* 155. § 9. *ante*, p. 424.

52 G. 3. c. 38.

to claim any such exemption, who shall not produce a certificate signed by the commanding officer of the regiment of local militia to which he shall belong, or in case of his removal from the county in which he may have been originally enrolled, then by the commanding officer of the regiment, in which he may have been subsequently serving, that he attended at the last period of annual training, or that he was prevented by illness or bodily infirmity, so certified to his commanding officer at the last period of annual training and exercise, or that he was absent by permission of his commanding officer.

Persons exempt nevertheless liable to serve in the regular militia if they neglect to attend training.

§ 40. Any person enrolled and serving in the local militia who shall have claimed exemption from service in the regular militia, shall nevertheless be compellable to serve in the regular militia, in case he shall not afterwards attend the periods appointed for the training and exercise of the local militia during the time for which he may be enrolled to serve in such local militia (unless prevented by any infirmity incapacitating him for service): and the commandant of the regiment, of local militia to which he may belong, shall certify such absence to the clerk of the subdivision for which he shall have been before balloted to serve in the regular militia, who shall make the same known to the deputy-lieutenants assembled at their next subdivision meeting, and such man shall then and there be enrolled to serve in the regular militia; or if he shall not then appear, shall be liable to any penalties imposed upon balloted persons not appearing to be enrolled in the regular militia.

5. Fines for Non-appearance, &c.

Persons balloted not appearing to be enrolled, shall be fined.

By stat. 52 *G*. 3. *c*. 38. § 44. If any person balloted shall, after notice thereof given to him, or left at his usual or last place of abode, refuse or neglect to appear within such period and at such place as shall be appointed for that purpose within the subdivision for which he shall have been so balloted, and be enrolled, and take the oath to serve under this act, he shall forfeit 30*l*.; or if a person not having or receiving any annual sum of money, profits, gains, allowances, or other income whatsoever, amounting in the whole to 200*l*. clear of all outgoings, taxes, or reprizes, 20*l*.; and if not amounting in the whole to 100*l*. clear of all outgoings, 10*l*.; and every such fine shall be paid to the clerk of the subdivision meetings, who shall on receipt thereof give a certificate, without fee of the same being paid, which certificate shall be countersigned by some justice or deputy-lieutenant, and shall, within 21 days after the receipt thereof, pay the same into the bank of *England* to a separate account of the agent-general for the local militia, being furnished with a receipt for the same; and the payment of such fine shall exempt such person from being balloted and enrolled for two years and no longer; and such person shall be liable to be balloted and enrolled in the year next but one after that in which he shall have been so balloted as aforesaid, and in like manner to serve or pay such fine as aforesaid, and so in each second succeeding year.

Fines to exempt for two years only.

Persons imprisoned compellable to serve four years.

§ 45. And any person imprisoned for the non-payment of any fine for not appearing to be enrolled, or for refusing to take the oath, or for refusing or neglecting to attend an annual period of training and exercise, shall be compellable to serve

for the full period of four years after the expiration of such imprisonment. 52 G. 3. c. 38.

§ 46. Every person claiming to be exempted from service upon payment of the fine of 20*l*. or 10*l*. instead of 30*l*. shall sign a declaration that the amount of his income does not exceed 200*l*. or 100*l*. as aforesaid, as the case may be, and shall deliver the same to the deputy-lieutenant before whom he shall appear to claim such exemption, or produce a certificate to the like effect, allowed by any commissioners under any act relating to the duties arising on property, professions, trades, and offices, or to any allowances made on any such rates and duties, within twelve months previous to the production of such certificate; and every person who shall make any false declaration in relation to any such claim, shall forfeit for such offence 50*l*. in addition to such fine.

Declarations of income to be made by persons claiming exemption on payment of 20l. or 10l.

§ 47. Provided also, that every person claiming to be exempted from service under this act upon payment of such fine as aforesaid, and every person liable to the payment of any fine under this act, for not appearing to be enrolled in the local militia, shall be summoned and required to appear before some deputy-lieutenant or justice, and shall be required by the deputy-lieutenant before whom he shall appear to claim such exemption, or by such deputy-lieutenant or justice before whom he shall be so summoned and required to appear, to sign a declaration that he hath not, directly or indirectly, by any policy, premium, or promise of any policy, or premium, or by any engagement, insured himself against such fine or any part thereof, and that no person or persons hath or have, directly or indirectly, in consideration of any sum of money or promise of any sum of money, or gift or reward, or for any valuable consideration whatever, undertaken, engaged, or promised in any way to indemnify him therefrom, or from any part thereof, or to repay to him, or to any person or persons on his behalf or for his use, benefit, or advantage, the said fine or any part thereof; and in case any person so claiming to be exempt, or so summoned or required to appear as aforesaid, shall refuse so to sign such declaration, or so to appear according to such summons or requisition, or shall make any false declaration in that behalf, every such person shall, upon conviction thereof before two justices, forfeit three times the amount of such fine; and in default of payment, shall be confined in any house of correction or common gaol for such county, for (not exceeding) three months, or until payment of such penalty; and shall be liable personally to serve in the said local militia for the full term of four years after the expiration of such imprisonment, or the payment of such penalty.

Such persons to sign declaration that they have not insured.

6. Vacancies, and supplying them by ballot, &c.

The mode of proceeding for supplying vacancies is directed by § 55. 57. 58. 59. 60. 66. and stat. 53 *G*. 3. *c*. 28. § 1. 11.

7. Enrolment and Inlistment of Servants, Apprentices, and Members of Friendly Societies, and Inlisting of the Local Militia in the Army, &c.

52 G. 3. c. 38. The enrolment of servants shall not vacate their contracts with their masters unless the local militia shall be embodied, &c.

By stat. 52 *G.* 3. *c.* 38. § 62. If any servant, hired by the year or otherwise, shall be enrolled as a local militia-man by virtue of this act, such enrolment shall not vacate or rescind the contract or alter the engagement between such servant and his master or mistress, or employer, unless the local militia of the county, for which such servant shall be enrolled, shall be embodied or called out by H. M. or ordered to be so, or unless such person so enrolled shall leave the service of his master, for the purpose of being trained and exercised, and shall not return again to the same service at the end of such period of training and exercise, or as soon after as reasonably may be, allowing to his master, an abatement from his wages in proportion to the duration of his absence from his said service, to be settled by a justice in the manner hereinafter mentioned; and in every such case, where any dispute shall arise between such servant and his master, touching any sum of money due to such servant on account of his service performed before the time of his departure from service, under the conditions of the said enrolment, or by being called out to join the local militia, or touching any abatement to be made by such servant by reason of his absence, for the purpose of being trained and exercised, it shall be lawful, on complaint made thereof, for any justice for the county, where such master shall inhabit, to hear and determine the same, and to examine upon oath every such servant, or any other witness touching the same, and to make such order, as the case may require, provided the sum in question do not exceed 20*l.*; and in case of refusal or non-payment of any sums so ordered to be paid by the space of seven days next after such determination, such justice shall issue forth his warrant to levy the same by distress and sale of the goods and chattels of such master or mistress, or employer or employers, rendering the overplus to the owner after payment of the charges of such distress and sale.

and if any dispute shall arise touching wages under 20l. a justice may settle it, and may grant warrant for levying the money by distress if not paid.

Local militia permitted to enlist into the regulars, except serjeants, &c. on permanent pay and drummers.

§ 64. It shall be lawful for any person balloted or enrolled to serve, or serving under this act, to inlist or enter into H. M.'s army, navy, or marines, or as a substitute or volunteer in the regular militia of the same or some adjoining county, at any time, except during such portion of the period of being assembled for the purpose of annual training and exercise, as H. M. shall by any order made in that behalf prescribe; and the enlisting or entry of every such man shall be immediately certified by the officer with whom such man shall have inlisted or entered, to the officer commanding the regiment, from which such man shall have inlisted; and all vacancies arising by any such inlisting, shall be supplied as any other vacancies: provided that no serjeant, corporal, or drummer of any regiment, on permanent pay as such [and by stat. 53 *G.* 3. *c.* 28. § 5. no *drummer* whether on permanent pay or otherwise] shall be entitled to his discharge, or be allowed to enlist into the army, navy, or marines, or regular militia, or to engage himself as a substitute or volunteer in the regular militia

53 G. 3. c. 28.

at any time, whether the regiment to which such non-commissioned officer or drummer shall belong, shall be assembled for the purpose of annual training and exercise or not, unless with the consent in writing of the commanding officer of his regiment given for that purpose. 52 G. 3. c. 38.

§ 65. Provided, that nothing in this act contained shall extend to authorise any apprentice balloted under this act to enlist in the army, navy, marines, or to enter as a substitute or volunteer in the regular militia, or to enter as a volunteer in the local militia, or being a member of a volunteer corps to transfer himself into the local militia without the consent of his master: Provided also, that no ballot, enrolment and service under this act, shall make void or in any manner affect any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract; and no service under this act, of any apprentice or servant, shall be construed to be an absence from service, or a breach of any covenant or agreement as to any service or absence from service, in any indenture of apprenticeship or contract of service.

Apprentices not permitted to enlist without master's consent.

§ 41. No member of any friendly society, serving or entering to serve under this act, shall by such service be excluded from such society, or be subject to the forfeiture of any benefit to which he may be otherwise entitled under any rules of such society; or to any fine or penalty imposed by such society for non-attendance.

Members of friendly societies.

§ 67. In all cases in the execution of this act, when any thing is directed to be enquired of or examined into, upon the oath of any witnesses, before any lieutenant of any county, or any deputy-lieutenant or lieutenants, or justice or justices, any such lieutenant, deputy-lieutenants, and justices, may administer such oath; and all other oaths to be taken in pursuance of this act, shall and may be respectively administered by any lieutenant or deputy-lieutenant.

Lieutenants, deputies, and justices, authorised to administer oaths.

8. Provisions relative to the Formation of Regiments, Officers, &c.

The formation of companies and regiments, and the appointments of officers in particular cases, and of staff and non-commissioned officers and drummers, are directed by § 68, 69, 70, 71, and from 74. to 84, inclusive, of stat. 52 *G.* 3. *c.* 38. and § 3. 4. 6. and 14. of stat. 53 *G.* 3. *c.* 28.

9. Drawing out the Local Militia, and of their Pay and Allowances when assembled for Training, Exercise, &c.

§ 85. The local militia, when drawn out and embodied, shall be entitled to the same pay and allowances, for themselves and families, according to their respective ranks, as H. M.'s other militia forces when drawn out and embodied.

Pay of local militia when embodied.

§ 86. Every person enrolled under this act shall, upon being assembled for training and exercise, be entitled to a sum not exceeding 10*s.* 6*d.* for the first year of his service, and 5*s.* 3*d.* each

Allowance for necessaries.

52 G. 3. c. 38. succeeding year, to be paid to the captain commanding the company to which he shall belong, for providing and keeping up such necessaries for him as may be specified in any order from H. M.'s secretary of state to that effect; and all such sums of money shall, at the conclusion of each period of exercise or service as aforesaid, be accounted for, by the captain commanding each company, to the quarter-master of the regiment to which such captain shall belong; and the residue, if any, paid to such quarter-master, who shall account for the same to the secretary at war: Provided, that no person shall be entitled to receive any allowance for necessaries, who shall not have been present during the whole of the period of annual exercise.

§ 87. And H. M. may put the local militia under the command of general officers.

H. M. may order the local militia to be called out yearly to be trained.

§ 88. H. M. may order and direct that the local militia shall be called out within their respective counties in each year, at such times, in such manner, and in such proportions, and under such regulations as H. M. shall direct in that behalf, for the purpose of being trained and exercised, regard being had to the local circumstances of each county, and to the seasons most important to the course of industry and cultivation within the same: and the periods and places for such exercise shall be appointed by the lieutenants or deputy-lieutenants of the several counties, with the approbation of H. M.: Provided that no local militia-man shall be trained or exercised any greater number of days in the whole in each year than twenty-eight entire days, exclusive of days of arriving at and departure from and marching to and from the place appointed for exercise (for which extra days the pay and subsistence allowed to H. M.'s forces on march shall be allowed); and no such local militia shall be ordered to march for such training and exercise out of the county within which any such local militia shall have been enrolled, unless as hereinafter directed.

Where towns in the county do not afford accommodation for quartering local militia, they may be marched into an adjoining county.

§ 89. H. M., by any order notified by his secretary of state, upon the application of the lieutenant of any county in which the principal town or towns of such county shall not afford sufficient accommodation for the quartering of the local militia of the county, during the training and exercising, or in any case in which it may be more convenient with respect to the residence of the persons enrolled in such local militia, and to the distance which such persons may have to march, may order the local militia of such county to be marched into any adjoining county for the purpose of training and exercising.

§ 90. H. M. may dismiss any part of such militia-men and discontinue the training.

Men may remove from one county to another:

§ 91. In case any person enrolled to serve as a private in the local militia, under this act, shall be desirous of removing from one county to another, [or, by stat. 53 G. 3. c. 28., from *England* to *Scotland*, and *vice versâ*,] at any time during the period of his service, it shall be lawful for him so to do upon giving notice in writing to his commanding officer, who shall certify the same to the lieutenant or deputy-lieutenants, or the clerk of the lieutenancy of the county to which such local militia-man intends to remove; and every such man so removing shall be received into the local militia of the county, if there be any local militia enrolled in such

county; and if not, into the local militia of some adjoining county to that to which he shall have removed, and shall continue to serve therein for the remainder of the term for which he shall have been enrolled; and every such man who shall not present himself to the deputy-lieutenants of some subdivision in such county or such adjoining county as aforesaid, for the purpose of being enrolled in the local militia thereof, and who shall not transmit to the commanding officer of the regiment from which he shall have removed, within one month after the expiration of such annual training, a certificate of the commanding officer of the regiment into which he may have been received, of his having been duly trained and exercised, shall forfeit double the sum which such person would have forfeited if he had not appeared to be trained and exercised in the local militia in which he was balloted under this act; and every person who shall again remove, or who shall proceed to any other county than that of which he shall have first given notice, shall in like manner again give notice, and transmit certificates as aforesaid: Provided that it shall not be lawful for any person enrolled to serve as a local militia-man to remove from one county to another during the time that the regiment to which he belongs shall be assembled, without having first obtained the consent of his commanding officer expressed in writing.

52 G. 3. c. 38.

but not during the period of training.

§ 92. It shall be lawful for the lord lieutenant or vice-lieutenant, or sheriff of any county, or, in the absence of the lord lieutenant and vice-lieutenant, and sheriff, for any two justices, and one deputy-lieutenant, to call out and assemble the local militia, or any part thereof, of such county for the suppression of any riot or tumult therein, or in any adjoining county; and every person then enrolled in the local militia so called out as aforesaid, who shall not appear and join his regiment within such time and at such place as shall be specified in any notice or notices put upon churches, chapels, or other conspicuous places, or otherwise publicly given, shall be subject to the same penalties and forfeitures as are contained in this act, for not appearing when the local militia shall be assembled for training and exercise: Provided that it shall be lawful for any justice or deputy-lieutenant to remit the whole or any part of any fine or penalty incurred for not appearing, upon proof that the person not appearing was prevented by absence or any unavoidable cause from receiving such notice, or appearing as aforesaid; and all such local militia, when so called out and assembled, shall be deemed to be assembled for training and exercise under this act; and all provisions relating to the local militia when assembled for training and exercise shall apply to the local militia called out upon such service as aforesaid, and all days of such service shall be deemed part of the days of training and exercise under this act: Provided also, that when any local militia shall be so called out as aforesaid, the same shall be immediately notified to one of H. M.'s principal secretaries of state, for H. M.'s approbation thereof: and that no such local militia shall be liable to be kept assembled upon any such service for any longer period than twenty-eight days in any one year; and if any such service shall arise after any such local militia shall have been trained and exercised for the full period of twenty-eight days in such year, then and in such case the days of such service shall be deemed

Lord lieutenant, &c. may call out the local militia for the suppression of riots.

but not to be kept so assembled more than twenty-eight days in one year.

52 G.3. c.38. part of the days of training and exercising of the succeeding year.

During the time of exercise, the mutiny act and articles of war shall be in force with respect to such local militia, but not to extend to life or limb.

Allowances to wives and families. § 42., and 53 *G.* 3. *c.* 28. § 2. Whenever any corps of local militia shall be assembled for the purpose of being trained and exercised, or for the suppression of riots, or for the suppression of rebellion or invasion, all persons enrolled therein who shall join on such assembling, and shall have families unable to support themselves, shall, during the period of their being so assembled, be entitled to the same relief to their wives and families, and under the like circumstances, and subject to the same regulations, as the wives and families of men balloted to serve in the regular militia of *G. B.* are entitled to, under stat. 43 *G.* 3. *c.* 47., or any other acts relating to the relief of the wives and families of men serving in the regular militia of *G. B.*; and for that purpose, all the provisions in the said acts respectively contained, shall extend to the giving such relief as aforesaid as effectually as if herein enacted: Provided that all sums of money which shall be advanced and paid to the wives and families of such men, shall, upon delivery of a quarterly account of the payment thereof, certified and signed by two justices of the peace of the county in which such relief shall be given, be repaid to the overseers or parish officers who shall have advanced the same by the receiver-general of such county, out of any public money in his hands: Provided also, that whenever any corps shall be assembled for training and exercise, all persons enrolled therein, having families unable to support themselves as aforesaid, shall be entitled to relief for their wives and families, notwithstanding such families may be resident in the place where the regiment may be assembled.

The notices to be given of the times and places of exercise are directed by § 96.

10. Billeting and providing Carriages for Conveyance of Baggage.

Provision is made for quartering and billeting the local militia when called out to exercise by § 100; and for providing carriages for the conveyance of the arms, clothes, accoutrements, ammunition, and stores of the militia, when called out for training and exercise, or for the suppression of riots or tumults by § 101.

11. Stoppages; Fines for Non-appearance; Deserters; improper Disposal of Arms.

By § 102. The local militia-men when assembled for training and exercise, may be put under stoppages, not exceeding 4*d. per* day, for providing them with linen and other necessaries, and defraying the expence of arms broken or damaged by neglect.

§ 103. & 104. direct the returns to be made of the state of each regiment of local militia when called out for exercise.

Fines on men not appearing at the time and § 105. Every local militia-man (not labouring under any infirmity incapacitating him) who shall not appear at the time and

place appointed for his being exercised according to the directions of this act, (notice having been published and given as by this act required), shall be deemed a deserter, and if not taken until after the time of any such exercise, shall forfeit 20*l.*; and also every local militia-man, who, having joined the regiment to which he belongs, or any company or detachment or division thereof, shall desert or absent himself during the time of any such exercise, and shall not be taken until after the time of such exercise, shall forfeit 20*l.*: and if such penalty shall not be immediately paid, the justice before whom any local militia-man shall be convicted of any such offence, shall commit him to the house of correction to hard labour, or to the common gaol, for any space not exceeding three months, and not less than fourteen days, or until he shall have paid the said penalty.

52 G.3. c.38.

place of exercise, or absenting themselves.

§ 106. In case any local militia-man shall desert or absent himself from his duty, and shall not return and voluntarily surrender himself to the adjutant or other officer, commissioned or non-commissioned, commanding at the city or place where the arms of the regiment to which he shall belong shall be deposited, or shall not be taken within the space of three months from the time of his so deserting or absenting himself, then upon certificate thereof from the commanding officer of the regiment to which he belonged, to the deputy-lieutenants, at any of their meetings for the subdivision for which he was enrolled, such deputy-lieutenants, or any two of them, or any one deputy-lieutenant and one justice, shall hold a subdivision meeting and proceed to ballot for another person to serve and be returned to such regiment in the room of such local militia-man; and in case he shall at any time thereafter return or be taken, he shall, notwithstanding any person shall have been chosen in his room, be compelled to serve in the same manner, and for the same term, as if no person had been so chosen.

If men absent themselves, and do not return, or are not taken within three months, others are to be balloted for.

Whenever such men return or are taken, they shall be compelled to serve.

The method of proceeding when information shall be received of the residence of a local militia-man, who shall not have joined his regiment at the annual exercise, or have deserted during it, or where non-commissioned officers retained on permanent pay shall desert, is directed by § 120. But § 121. directing a reward of 20*s.* for apprehending any deserter, to be paid out of the contingent fund of the regiment to which he belongs, is repealed by stat. 53 *G.*3. *c.* 28. § 13., which provides for the payment of such reward by the treasurer of the county out of the county rates, upon the warrant of any justice before whom such deserter shall be brought.

53 G.3. c.28.

§ 122. If any person shall harbour, conceal, or assist any deserter, knowing him to be such, he shall forfeit for every such offence five pounds.

Penalty for concealing a deserter.

12. How Offences shall be tried, and the Powers of Courts-martial.

The provisions as to the trial of offences and the powers of courts-martial, are contained in § 94. 95. 109. 110. 111. 112. 113. 114. 127. & 137.

13. Arms and permanent Pay.

52 G. 3. c. 38. Penalty for selling, pawning, or losing arms, &c.

By stat. 52 *G*. 3. *c*. 38. § 107. All muskets delivered for the service of the local militia shall be marked distinctly in some visible place with the letters (LM), and the name of the county to which they belong; and in case any local militia-man shall sell, pawn, or lose or wilfully damage any of his arms, clothes, accoutrements, or ammunition, or neglect or refuse to return, when required to do so, the same in good order to his captain, or to the person appointed to receive the same, every such man shall, for every such offence, forfeit not exceeding 3*l*.; and if he shall not immediately pay such penalty, the justice before whom he shall be convicted shall commit him to the house of correction, to be kept to hard labour, for any time not exceeding three months, or until he shall have paid such penalty.

Penalty for buying local militia arms, &c.

§ 108. If any person shall knowingly and wilfully buy, take in exchange, conceal, or otherwise improperly receive any local militia arms, clothes, or accoutrements, or any such articles belonging to any local militia man as are generally deemed regimental necessaries, or may have been specified as such in any order from H. M.'s secretary of state to that effect, being provided for the soldier, and paid for by the money allowed under this act for providing necessaries, or by deductions out of his pay, or any public stores or ammunition whatever delivered for the local militia, upon any account or pretence whatsoever, contrary to this act, he shall forfeit for every such offence the sum of 10*l*. and if such offender shall not immediately pay such penalty and shall not have sufficient goods and chattels whereon to levy it, the justice before whom he shall be convicted shall commit him to the common gaol for the space of six months, or until he shall have paid the said fine, or shall cause such offender to be publicly or privately whipped, at the discretion of such justice; and it shall be lawful for the justice before whom any such offender shall be convicted to order him to be detained in custody until a return shall be made to the warrant of distress.

Arms, &c. when the local militia is not embodied, where to be kept.

§ 115. The arms, accoutrements, clothing, and other stores, belonging to every regiment, when not embodied, shall be kept in such convenient place as the commandant shall direct, with the approbation of the lieutenant of the county; and the quarter-master shall have the charge and care thereof, under the superintendance of the commandant; and it shall be lawful for the general meeting of lieutenancy to order a convenient place for the purpose of keeping such arms, to be provided or built, if no such convenient place can be found, the hire or cost of which place shall be paid for out of the county rates.

§ 116. It shall be lawful for H. M. to order and direct that such proportion of serjeants corporals, and drummers, not exceeding one half of each rank, together with the adjutant, quarter-master, and staff serjeants, of each regiment, shall remain on permanent pay, at the head quarters of each regiment, as H. M. shall order and direct.

§ 117. Commandant of corps may agree with non-commissioned officers and drummers to serve on reduced pay, who shall take the oath in this section specified.

§ 118. The quarter-master, and all the serjeants, corporals, and drummers, on permanent pay in every regiment, shall constantly be resident within the place where the arms are kept, or within one mile thereof, excepting in the cases specified; and shall be under the command of the adjutant, who shall be constantly resident within such place, or within two miles thereof (unless absent on leave), and shall act in such command under the orders of the colonel of such regiment. 52 G.3. c.38.

§ 119. It shall be lawful for H. M. at any time to direct that the serjeants, corporals and drummers, retained on permanent pay should be employed within their respective counties under the command of the adjutant in raising volunteers for the regular forces or for the militia: provided that no such person, who shall have consented to receive any reduced rate of pay during the period of the regiment to which he belongs not being embodied or assembled for exercise, shall be compellable to be employed on such service in any other town or place than that in which the arms belonging to such regiment are kept, without his consent specified in writing.

Serjeants, &c. may be ordered to raise volunteers for the regular forces or the militia.

14. Embodying the Local Militia, and their Pay and Allowances in such case.

By stat. 52 *G.*3. *c.*38. §123. In all cases of actual invasion of any part of the U. K., or of the appearance of an enemy in force upon the coast, and in all cases of rebellion and insurrection, H. M. may by any order in council or proclamation, draw out and embody, and direct such local militia, or any part thereof, to be marched to any part of *G. B.* for the prevention and repelling of any such invasion, or for the suppression of any rebellion or insurrection, and to keep the same so embodied for any period, not exceeding six weeks after the enemy shall have been repelled, or driven from the coast, or after such rebellion or insurrection shall have been suppressed: and all the provisions of the mutiny act, and articles of war, shall be in force with respect to the local militia while embodied as aforesaid.

H. M. may order the local militia to be embodied in cases of invasion, &c.

§ 124. Local militia not to be ordered out of *G. B.*

§ 125. When H. M. shall so order the local militia to be embodied, he shall issue a proclamation for the meeting of parliament, in fourteen days.

§ 126. The lieutenant of every county, or (on his death or removal, or in his absence from his county,) any three or more deputy-lieutenants, to whom any order from H. M. for drawing out and embodying the whole of the local militia of such county shall be directed, shall forthwith issue his or their order to the chief constables, or other officers of the several hundreds, with directions to forward the same immediately to the constables of the several parishes, who are required, upon receipt thereof forthwith to cause notice in writing to be given to the several local militia-men, or left at their usual places of abode, to attend at the time and place mentioned in such order.

Orders to be issued in that case.

§ 128. If any person ordered to be drawn out and embodied as aforesaid (not labouring under any infirmity incapacitating him to serve as a local militia-man), shall not appear and march in pursuance of such order, he shall be liable to be apprehended and punished as a deserter, according to the provisions of the mutiny

Local militia-men not marching to be deemed deserters.

52 G.3. c.38. act; and if any person shall harbour and conceal any such local militia-man, when ordered to be drawn out and embodied as aforesaid, knowing him to be such local militia-man, he shall, for every such offence, forfeit 100*l.*

and punished accordingly. § 137. If any person sworn and enrolled (not labouring under any infirmity incapacitating him to serve as a local militia-man), shall not with due diligence join the regiment, for which he shall be so sworn and enrolled (if then embodied), according to such order as shall be given him in that respect by the lieutenant or deputy-lieutenants, or any of them, or by any officer of the said regiment, or by any other person authorized to give such order; or if any person serving in any embodied local militia, or any serjeant, corporal or drummer shall desert or absent himself from his duty, every such serjeant, corporal, drummer, or private local militia man shall be liable to be apprehended and punished according to the mutiny act.

Pay. § 129. From the date of H. M.'s order in council or proclamation as aforesaid, for drawing out the local militia into actual service, the officers and men shall be entitled to the same pay as regular militia; and if any non-commissioned officer, drummer or private shall be maimed or wounded in such actual service, he shall be entitled to the benefit of *Chelsea Hospital.*

When the pay of the officers and men who shall not join on the day appointed, shall commence. § 130. The pay of every officer, drummer and private, who shall not join his regiment, on the day appointed for that purpose, shall commence only from the day of his joining such regiment, unless he shall have been prevented from joining on the day appointed as aforesaid by sickness or any other inevitable necessity, to be proved to the satisfaction of the commanding officer of the regiment, in which case, he may, by order of his commanding officer, be accounted with for his pay from the date of H. M.'s order aforesaid.

When the pay of men enrolled after the local militia is embodied shall commence. § 131. The pay of every person enrolled to serve in the local militia, after embodied and called out into actual service, shall commence upon the day on which such person shall join his regiment, provided, that it shall be lawful for the deputy-lieutenants or justices by whom any such person shall have been so enrolled, to order and direct an allowance to be made to him, for the purpose of enabling him to proceed to join his regiment.

Payment of the marching guinea. § 132. When the local militia shall be ordered out into actual service, the receiver-general of the rates and duties under the management of the commissioners for the affairs of taxes for the county, shall pay to the captain or other commanding officer of every company so ordered out, one guinea for the use of every private belonging to his company; and shall also pay to every captain or other commanding officer of a company as aforesaid, one guinea for every recruit as early as may be after such recruit shall have joined his company, while out in actual service as aforesaid, to be applied as the commandant shall think most advantageous for the respective men.

15. Prolongation of Period of Service.

The proceedings to be adopted when the local militia shall be embodied, and absent from the county to which it belongs, and also when assembled for annual training, and any of the men whose

times will expire within certain periods, shall be willing to continue their services, are directed by § 133. 134. 135. & 136. 52 G. 3. c. 38.

16. Embodying a Proportion of the Local Militia.

The proceedings to be taken when a part only of the local militia of any county shall be embodied, are directed by § 138. to 154. inclusive.

17. Increasing the Number.

In case of invasion or rebellion, the militia may be increased.

§ 155. It shall be lawful for H. M. (the occasion being first communicated to parliament, if the parliament shall be then sitting, or declared in council and notified by proclamation, if no parliament shall be then sitting or in being), to order and direct, by his royal proclamation, that in addition to the number of men required by the provisions of this act to be raised, there shall be forthwith raised and enrolled in the said several counties, any number of men as will, in addition to and including the effective yeomanry and volunteers serving therein, together with the local militia raised for such county under the provisions of this act, make the whole force of such county equal to six times the original quota of such county, under stat. 42 G. 3. c. 90.

§ 156. When such additional number of local militia shall be ordered to be raised, H. M. shall issue a proclamation for the meeting of parliament within fourteen days.

18. Disembodying the Local Militia.

H. M., by proclamation, may reduce and disembody such additional number of local militia.

§ 157. It shall be lawful for H. M. from time to time whenever he shall deem it expedient to reduce the whole or any part of such additional number of local militia as aforesaid, by his royal proclamation to declare such reduction accordingly; and in case such additional number of local militia as aforesaid or any part thereof, shall be then embodied, to disembody the same, or any number of private men equal thereto, without regard to whether such men were raised and enrolled in pursuance of any proclamation for raising such additional number, or were enrolled before, and were serving at the time of the issuing thereof; and the private men so disembodied, or so many as may have been enrolled and not embodied at the time of issuing such proclamation, shall nevertheless remain liable to serve for the respective periods for which they shall have been enrolled, and shall, during such periods, supply all the vacancies that may arise in the parishes or places, for which they shall have been so enrolled, whenever called upon so to do.

19. Particular Jurisdictions.

§ 158. Relates to *Berwick-upon-Tweed.*

§ 159. To the *Isle of Wight.*

§ 160. To the constablery of *Craike*, the parish of *Maker*, the town and parish of *Wokingham*, the hamlet of *Coleshill*, the hamlet of *Saint Thomas's Chaple*, the township of *Filey*, *Threapwood*, the parish of *Saint Martin*, on the south side of the waters called *Welland*, all of which by § 161. are to be subject to the authority

52 G. 3. c. 38. of the lieutenants of the counties, within which such towns and places are by this act deemed to be situated.

The number to be balloted, &c. within the Cinque Ports, &c.

§ 162. The number of private men to be balloted and enrolled for the local militia under this act, within the *Cinque Ports*, two ancient towns and their members, shall not exceed one thousand men.

Warden of the Cinque Ports, &c. shall put this act in execution.

§ 163. 164. 165. The warden of the *Cinque Ports*, two ancient towns and their members, and in his absence his lieutenant or lieutenants, shall within their respective juristlictions put into execution this act, and use and exercise all the powers and authorities contained in it for the purpose of carrying the same into execution, and raising the men.

§ 166. and 167. A local militia shall be balloted from among the miners of *Cornwall* and *Devon*.

§ 168. Powers of stat. 42 *G.* 3. *c.* 72. to extend to this act.

§ 169. Relates to the Tower Hamlets.

Churchwardens and overseers in Sussex and Kent to have the same powers as constables in other places.

§ 171. The churchwardens and overseers, &c. of the several parishes in the counties of *Sussex* and *Kent* shall for the purposes of this act be deemed the officers of such parish, and shall be invested with the same powers and authorities, and be liable to the same pains, penalties, and forfeitures, as the constable, &c. of any parish, &c. is invested with, or subject and liable to by virtue of this act.

20. Fines for Deficiencies in Number.

The proceedings for assessing and levying fines, where the full number of men required to be raised by the act, shall not have been balloted and enrolled, are directed by § 172. to 190. inclusive of stat. 52 *G.* 3. *c.* 38. and § 10. of stat. 53 *G.* 3. *c.* 28.

21. General Provisions.

Subdivision clerks, if required, to give bond.

By stat. 52 *G.* 3. *c.* 38. § 191. Every clerk of subdivision meeting shall, if required so to do by the deputy-lieutenants assembled at any general or subdivision meeting, give security by bond to H. M., with two sufficient sureties, in such sums as the deputy-lieutenants shall fix, for duly accounting for and remitting all monies paid into his hands under the provisions of this act.

Subdivision clerks to keep an account of fines, &c. and transmit the same to the secretary at war. H.

§ 192. And shall keep an account, in the form annexed, marked (H), or in such other form as may be directed by the secretary at war, of all fines and penalties received by him, and also of all sums allowed to any individuals, counties or parishes, by reason of any fines or penalties, or parts, being remitted under the provisions of the act, and the deputy-lieutenants or justices attending at the time of any such fine or penalty being imposed or remitted, or any two of them, shall certify the same to be correct, and the clerk of subdivision meetings shall verify the same upon oath, which oath any one deputy-lieutenant or justice is authorized to administer, and shall transmit to the secretary at war such account made up to the 24th of *December* yearly, or to such other period as the secretary at war shall direct.

Subdivision clerks to transmit to secretary at war accounts

§ 193. Every clerk of subdivision meetings shall, within seven days after the 24th of *March*, *June*, *Sept.* and *Dec.* in each year, or oftener if required, transmit an account to the secretary at

war of all sums received by him and remitted to the bank of *England*, to the account of the agent-general verified on oath before one deputy-lieutenant, or justice, in the form annexed marked (I), or such other form as may be prescribed by the secretary at war. 52 G. 3. c. 38. of money remitted to the agent-general, verified on oath.

§ 194. In all cases in which it is in this act required that any return or list should be made, or any notice given, or any fine or penalty, remitted by any clerk of the peace, or by any clerk of general or subdivision meetings, or by any overseer, or by any colonel commandant or other officer of local militia, every such clerk of the peace or other person as aforesaid, who shall neglect to do so shall forfeit 20*l.* Penalty on persons neglecting to make returns and to give notices, &c. I.

§ 195. Commissions in local militia not to vacate seats in parliament.

§ 196. Voters going to elections of members not punishable for absence.

§ 197. Non-commissioned officers, drummers, and men, not liable to serve as peace officers.

§ 198. Married local militia-men may set up trades, &c. in any part in *G. B.*, as soldiers may under stat. 24 *G.* 3. *c.* 44. (*a*)

§ 199. No stamp duty on commissions in local militia.

§ 200. Bills for pay and allowance for remitting money on account of local militia, to be drawn on unstamped paper.

§ 201. Fines and penalties which shall exceed 20*l.* [except the fine of 30*l.* imposed by the 44th section for not appearing to be sworn and enrolled, which now by stat. 53 *G.* 3. *c.* 28. § 12. is to be sued for, and recovered before a justice in the same manner as fines not exceeding 20*l.*] shall be recovered by action of debt, &c. in the courts at *Westminster*, &c. and fines and penalties which shall not exceed 20*l.* shall, on proof before a justice, be levied by distress; and for want of sufficient distress such justice is required, where no particular time of commitment is directed, to commit such offender for any time not exceeding three months; and the money arising by all such fines and penalties, the application whereof is not otherwise particularly directed, shall be remitted to the agent-general for local militia, or to the bank of *England*, to be placed to his account. How penalties shall be recovered, and how applied where not otherwise directed by this act.

§ 202. Where it is directed that any fine shall be remitted to any subdivision clerk, or to the agent-general, or to the bank of *England*, any one or more deputy-lieutenants, or justices, by whom any such fine may have been imposed, shall within ten days transmit to the secretary at war a certificate of the amount thereof, in the form of the schedule marked (G). Certificate of the amount of certain penalties to be transmitted to the secretary at war. G.

§ 203. Witnesses not attending, liable to a penalty of 5*l.*

§ 205. No order of conviction to be removed or superseded by *certiorari.*

§ 206. Actions shall be commenced within six months after the fact committed; Defendants may plead the general issue, &c.

§ 207. Provisions relating to counties to extend to ridings, and relating to hundreds to extend to rapes, &c., powers given to constables to extend to tythingmen, &c.

(*a*) This privilege is only granted to those who shall have served when this force is drawn out into actual service. — The two phrases "*drawn out for training and exercise,*" and "*drawn out into actual service,*" are contradistinguished throughout the act.

Schedule (A.)

I ——, clerk of the peace for the county of ——, do hereby certify, that the officers below specified, serving in the —— battalion of local militia, have left with me their qualifications as directed in the 11*th section of the act for amending the laws relating to the local militia.*

—— —— —— *colonel.*
—— —— —— *lieutenant colonel.*
—— —— —— *major.*
—— —— ——
—— —— —— } *captains.*
—— —— ——
—— —— ——
—— —— —— } *lieutenants.*
—— —— ——
—— —— ——
—— —— —— } *ensigns.*
—— —— ——

B. Form of Oath.

I ——, do make oath that I am by my trade a ——, and have been usually resident in the parish of ——, in the county of ——; that I am unmarried, [or, *have a wife living,* as the case may be]; *and that I have no children,* [or, *not more than two children born in wedlock*]; *and that I have no rupture, nor ever was troubled with fits, and am no ways disabled by lameness or otherwise, but have the perfect use of my limbs; and that I am not a seaman or seafaring man. As witness my hand at ——, the —— day of ——, one thousand eight hundred and ——.*

Sworn before me at ——, this —— day of —— one thousand eight hundred and ——.

Witness present,

Schedule (C.)

SUBDIVISION of ——, in the county of ——.
RETURN of enrolment, Dated the —— day of ——.

Parishes.	NAMES OF MEN.		Date of Enrolment.	Age.	CLASSES.			
	Balloted.	Volunteers.			1st.	2d.	3rd.	Last.
A.	S. Jones.	—	June 1st.	22	✕			
B.	—	T. Gray.	3rd.	26	—	—	✕	
Totals - -								

Signed A. B. clerk to subdivision meeting.

Schedule (D).

RETURN of the ——— company in the ——— of the local militia of the county of ———, Dated the ——— day of ———.

Hundred or Division.	Parish.	NAMES OF MEN SERVING.		Age.	CLASSES.			
		Balloted.	Volunteers.		1st.	2d.	3d.	Last.
H .	*B.*	S. Jones.	—	32	—	×		
M.	*C.*		T. Gray.	24				
Totals - -								

Signed A. B. Captain of ——— company.

Schedule (E).

RETURN of private local militia men serving for the county of ———, Dated the ——— day of ———.

Description of Men.	No. of each.	Years of Service unexpired.				No. in each Class.			
		1.	2.	3.	4.	1.	2.	3.	Last.
Balloted - -									
Volunteers - -									
Totals - -									

A. B. clerk to general meetings.

Schedule (F.)

Dated the —— day of ——.

Name of the County.	Nams of the Men.	Of the Parish of	Of the Hundred or other Division of	Time of Service expires on	Sum for which they are willing to serve.	Signature of Consent.
	A. B.	*P.*	*H.*			*A. B.*
	C. D.	*Q.*	*I.*			*C. D.*

Schedule (G.)

THIS is to certify, that I [or, *we,* as the case may be] A. B. *one* [or more] *of his majesty's justices of the peace* [or, *deputy-lieutenants,* as the case may be] *did, on the* —— *day of* —— *last past, levy upon* C. D. *the sum of* —— *pounds, being the amount of fine imposed* [here specify the offence] *under the act for amending the laws relating to the local militia of* England. *Dated this* —— *day of* ——.

(*Signed*) A. B. *justice.*

Schedule (H.)

ACCOUNT of penalties imposed and remitted by the Lieutenancy.

Date when imposed.	Name of Person.	Penalty of 30l. for Persons worth more than 200l. per ann.	Penalty of 20l. for Persons worth more than 100l. per ann. and not exceeding 200l.	Penalty of 10l. for Persons worth less than 100l. per ann.	Remittance of Fines, &c. allowed by the Lieutenancy.	Net Sum imposed.	Remarks.

Deficiency in the subdivision of —— in the county of —— as *per* return herewith annexed, signed by the commandant, dated the —— being —— men at ——l. per man, ——l. paid to the clerk of subdivision meetings for —— on the ——.

We do certify, that the above account is truly and justly stated to the best of our knowledge and belief,

—— deputy-lieutenant.
—— magistrate.

Schedule (I.)

QUARTERLY Account of the clerk of subdivision meetings.

Date when received.	Name of Person fined.	Penalty of 30l. for Persons worth more than 200l. per ann.	Penalty of 20l. for Persons worth more than 100l. and not exceeding 200l.	Penalty of 10l. for Persons worth less than 100l. per ann.	Amount of each Penalty.	Date when remitted.		Amount of each Remittance.
							By remittance to the Bank of England.	
							By remittance to the Agent General.	

Sworn before me ———
——— day of ——— 18—
——— deputy-lieutenant or justice.

I hereby certify upon oath, that the above is a just and true account of all sums received by me as clerk of the subdivision meetings of the county of ——— between the ——— day of ——— and the ——— day of ——— to the best of my knowledge and belief.

——— Signature.
Clerk of the subdivision of the county of ———.

§ V. Yeomanry and Volunteers.

[43 G. 3. c. 96. c. 161. — 44 G. 3. c. 54. — 53 G. 3. c. 81. — 56 G. 3. c. 39. — 57 G. 3. c. 44.]

By stat. 44 *G.* 3. *c.* 54. § 1. All the provisions of stats. 42 *G.* 3. *c.* 66. 43 *G.* 3. *c.* 121. & 44 *G.* 3. *c.* 18. which relate to the corps of yeomanry and volunteers in *G. B.*, are repealed. 44 G.3.c.

§ 2. But no person entitled under the said acts, by reason of any return made under them, to any exemption from serving, or being ballotted to serve in the militia or other additional force, or to any exemption from the horse or hair-powder duties, shall lose the same, until the time fixed in this act for making the first return after the passing thereof.

The provisions and regulations now in force, with regard to volunteers, may be comprised under the following heads:

1. *Acceptance of the Services of the Corps, Rank and Powers of Officers.*
2. *Exemptions and Returns.*
3. *Actual Service.*
4. *Exercise of Cavalry Corps.*
5. *Arms, Subscriptions, and Rules.*
6. *Privileges and General Provisions.*

1. Acceptance of the Services of the Corps, &c.

44 G. 3. c. 54. The king may continue the services of corps accepted before this act, and may accept such as may offer their services.

By stat. 44 *G.* 3. *c.* 54. § 3. H. M. may continue the services of all corps of yeomanry or volunteers accepted before the passing of this act, and also accept the services of such as may be formed after the passing thereof, such corps respectively being formed under officers having or who shall have commissions either from H. M. or any county lieutenant, or any other person specially authorised by H. M. for that purpose, upon such conditions, and according to such regulations as have been or may be approved by H. M., in regard to such corps whose services have been accepted before the passing of this act, or shall hereafter be accepted, as H. M. may think proper: and may disband or discontinue the services of the whole, or of any parts of such corps, whenever it may seem expedient to H. M. so to do: provided that the services of all corps accepted before the passing hereof, shall be deemed to be continued under the provisions hereof, unless H. M. shall signify his intention of disbanding or discontinuing their services, by any order from the principal secretary of state.

Volunteers to take the oath of allegiance.

§ 20. And every person enrolled in any corps of yeomanry or volunteers before the passing of this act, who shall not have already taken the oath of allegiance, and also every person so enrolled after the passing hereof, shall as soon as possible take the oath of allegiance, required by stat. 43 *G.* 3. *c.* 96. (*a*) which oath may be administered either by any deputy-lieutenant or justice, or by any commissioned officer of the corps.

Adjutants, &c. receiving constant pay, subject to mutiny act and articles of war.

§ 21. All adjutants, serjeant-majors, drill-serjeants, and serjeants of yeomanry or volunteers, receiving the constant pay of their rank, and all trumpeters, buglemen, and drummers receiving any pay as such therein, from the king or otherwise at any daily or weekly rate, and also all attested farriers serving and receiving pay therein, shall be subject to the mutiny act and articles of war; and shall be liable to be tried for any crime committed against such act or articles of war, by any general or detachment or regimental court-martial, according to the nature and degree of the offence, in like manner and under the like regulations as adjutants, serjeant majors, serjeants, corporals, or drummers of H. M.'s militia forces: provided that every such court-martial be composed wholly of officers of the yeomanry or volunteer establishment; and no punishment awarded by such court-martial shall extend to life or limb, except when such corps are called out in cases of invasion, or appearance of an enemy in force upon the coast.

In the case of *Rickman* v. *Studwick*, it was decided that a drill-serjeant in a volunteer corps, being sworn and receiving constant pay was not entitled to the privilege from arrest given to soldiers in the regular army by the mutiny act; the Court of K. B. being of opinion that the 44 G. 3. *c.* 54. only subjected drill-serjeants

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(*a*) " I *A. B.* do sincerely promise and swear, that I will be faithful and bear " true allegiance to H. M. King *George* the ———, and that I will faithfully " serve H. M. in *G. B.* for the defence of the same, against all his enemies and " opposers whatsoever."

to the regulations of the mutiny act so far as relates to trial and punishment by courts-martial, &c. 8 *East*, 105.

By stat. 44 *G*. 3. *c*. 54. § 25. No officer of any corps of yeomanry or volunteers shall sit in any court-martial upon the trial of any officer or soldier of the other forces; nor shall any officer belonging to the latter sit in like manner upon the trial of any officer, non-commissioned officer, drummer, trumpeter, or private, in any corps of yeomanry or volunteers. 44 G. 3. c. 54. No volunteer officer to sit on the trial of any regular officer or soldier, nor contrariwise.

§ 26. All officers of corps of yeomanry or volunteers, commissioned by the king or by county lieutenants, or others specially authorised by the king for that purpose, shall rank with the officers of the regulars and militia, as the youngest of their rank. Rank of officers.

§ 27. And any commanding officer of any corps, when not summoned or assembled upon actual service in case of invasion or appearance of the enemy in force upon the coast, may discharge any member of the corps under his command, not being a commissioned officer, for any disobedience of orders or breach of discipline while under arms; and also for any neglect of attendance and duty, or misconduct, or improper behaviour as a member of his corps, or for other sufficient cause, the existence and sufficiency of such several causes respectively being to be judged of by such commanding officer, and immediately to strike such person out of the muster roll of the corps to which he shall belong: provided that every such person shall remain liable to all the provisions of this act, as to compelling the payment of any subscriptions, or arrears of subscription, or fines incurred before or at the time of such discharge, and as to the delivering up and restoring of any arms, accoutrements and clothing. But nothing herein contained shall extend to abrogate or affect any rules or regulations of any such corps which have been approved by H. M., and which are applicable to the discharge of any member when not summoned or assembled upon actual service; provided also that nothing herein contained shall be construed to extend to prevent H. M. from signifying his pleasure in such manner, and giving directions with respect to any such case of discharge, or in respect to any rules and regulations with regard to any cases of discharge, as he shall think most proper. Commanding officers may discharge men, when not on actual service, for disobedience or improper conduct.

§ 28. Where the rules and regulations approved by H. M., of any such corps, shall not provide for any such cases of misconduct, disobedience of orders, or breach of discipline while under arms, any commanding officer, in case of misconduct under arms, may disallow to the person the day on which he shall have so misconducted himself, as a day of attendance, for the purpose of entitling him to any exemption under this act, and may direct that he shall forfeit one day's pay, in cases where any pay is allowed, or either to disallow any such day of attendance, or to direct the forfeiture of one day's pay, as such commanding officer shall in his discretion think fit. Volunteers misbehaving themselves to lose one day's attendance or pay, at the discretion of the commanding officer.

§ 29. And every person who shall not during the times of training and exercise, or of being under arms, or wearing the clothing or accoutrements of the corps, and going to any place of exercise or assembly of the corps, conduct himself in a decent and orderly manner, or shall not obey the lawful command of the commanding officer, may be ordered by him into the custody of any persons Volunteers behaving disorderly while under arms may be ordered into custody.

4 G.3. c.54. belonging to such corps, for the time during which it shall then remain under arms.

Volunteers may quit their corps, except when called out in case of invasion.

§ 30. Any yeoman or volunteer may at any time (except when summoned or assembled upon actual service, in case of invasion or appearance of the enemy in force upon the coast, or voluntarily assembled for the purpose of doing military duty, under any of the provisions, or in any of the cases specified in this act) quit such corps, and he shall accordingly be struck out of the muster roll of such corps in the manner and under the conditions herein-after mentioned.

But not without notice of intention to quit, nor till arms, &c. shall have been delivered up, and all fines paid.

§ 31. But no person shall be entitled to quit any corps without giving fourteen days' notice in writing of his intention to the commanding officer, nor until he shall have delivered up to him, or to some person appointed by him to receive the same, all arms, accoutrements, clothing, and appointments, that shall have been furnished to him at the public expense, or by any other person, or at the charge of any subscription for furnishing such articles, in good order and condition (reasonable wear and tear only excepted), and shall have paid all subscriptions, and arrears of subscriptions, and also all fines incurred by him, under any of the rules and regulations of his corps, either before or at the time of or by reason of his quitting such corps: provided that if any persons enrolled in any corps (except the persons herein-before mentioned as receiving the constant pay of their rank), shall at any time hereafter enlist in any of H. M.'s forces, or shall enrol himself as a substitute or volunteer in the militia, he shall, immediately after such enlisting or enrolment, be considered as discharged from such corps of yeomanry or volunteers; and the commanding officer shall, upon such enlisting or enrolment being duly notified to him, and upon receiving back from such person his accoutrements, clothing, and appointments, in the manner before mentioned, strike the name of such person out of the muster roll, and shall specially certify the same in the next return to be made under this act.

Volunteers not receiving constant pay, who enlist in H. M.'s forces, &c. shall be considered as discharged.

Persons quitting their corps, or discharged for misconduct, shall become liable to serve in the militia, and to pay the horse and hair powder duties; and such quitting or discharge to be certified by the commanding officer.

§ 32. And every person who shall quit any corps of yeomanry or volunteers, or be discharged therefrom for non-attendance or any misconduct or misbehaviour, shall immediately thereupon, unless otherwise exempted, become liable to serve, if he shall have before been chosen or shall thereafter be chosen by ballot, in the militia; and shall also immediately become liable to such of the horse or hair powder duties for which such person shall have acquired any right of exemption, for the year ending the 5th day of *April* next after the time of his quitting or being discharged from such corps; and the commanding officer shall forthwith certify the quitting or discharge of such person to the clerk of the general meetings of the county in which such corps shall be formed, and also to the assessor of the said duties for the parish or place in which such person shall reside; and such assessor shall forthwith deliver such certificate to the surveyor of the district in which such parish or place shall be situate, who shall certify the same to the commissioners acting in the execution of the before recited act for the same district, who shall forthwith cause such exemption to be disallowed, and the assessment of such person, if any such assessment shall before have

been made, to be amended, or otherwise a new assessment to be made in respect of such duties for such year ending as aforesaid. 44 G. 3. c. 54.

§ 33. Any person who may have given such notice to his commanding officer of his intention to resign, and who may think himself aggrieved by reason of any such commanding officer refusing to strike his name out of any muster roll, on account of any subscription or arrears of subscription, or any fines or forfeitures not having been paid, or of any arms, accoutrements, clothing, or appointments, not having been delivered up, or not having been delivered up in good state and condition, or on any other account whatsoever, may appeal to any two deputy-lieutenants of the subdivision in which such corps shall have been formed, or of any adjoining subdivision, or to any one deputy-lieutenant and one justice, acting within any such subdivision, (not being members of the corps); who shall hear and determine such appeal, and examine any person or persons thereon, upon oath (which oath they are hereby authorised to administer), and may discharge such person if they shall think, under all the circumstances, that he hath complied with this act, and may order the commanding officer forthwith to strike such person out of the muster-roll, or order and direct the payment of such sum as may appear to them ought to be paid by such person, in respect of any such subscription, or arrears, or fines, as aforesaid; or may order and direct the delivery of any arms, accoutrements, clothing, or appointments, or the payment of any sum as shall appear reasonable for any loss on account thereof, or any damage that may have been done thereto before such discharge; which sums may be levied and applied as any like fines or sums of money may be recovered and applied; and the determination of such deputy-lieutenants and justices shall be final and conclusive.

Persons aggrieved may appeal.

By stat. 53 *G.* 3. *c.* 81. § 4. No member of any corps of volunteers whose services shall have been or may be discontinued by any order of H. M. shall be compelled or liable to serve in the militia, by reason of his having been balloted during the period of his being an effective volunteer; notwithstanding stat. 44 *G.* 3. *c.* 54.: Provided, that such exemption shall not extend to any volunteers discharged for misconduct, or quitting any corps before the services thereof shall have been discontinued by order of H. M.

53 G. 3. c. 81. Volunteers discontinued and not discharged for misconduct, not to be liable to serve in militia, (44 G. 3. c. 54) although balloted while volunteers.

(2.) Exemptions and Returns.

By stat. 44 *G.* 3. *c.* 54. § 4. And every person enrolled and serving as an effective member of any corps of yeomanry or volunteers, and certified as such, shall be exempt from being liable to serve personally, or to provide a substitute in the militia, and shall remain exempted so long as he shall continue to be so certified. But he shall not be entitled to any exemption mentioned in this act, where, in the offer or acceptance of service of such corps, it shall have been specified that such exemption would not be claimed by or allowed to the members thereof, nor shall any greater number of persons in any corps be entitled to any exemptions under this act than shall be allowed as the established number of such corps.

44 G. 3. c. 54. Exempt from militia and defence acts.

54 G. 3. c. 54.

Who are to be deemed effective.

§ 5. No such person shall be deemed effective, or shall be returned as such by any commanding officer, or be entitled to any exemption who shall not have duly attended, properly armed and accoutred, and mounted, if cavalry, at the muster or exercise of the corps to which he belongs, if cavalry, four days, if infantry, eight days at the least, in the course of the four months next preceding each return made under this act; [but by stat. 56 *G.* 3. *c.* 39. the number of days' attendance at muster or exercise shall be six in each year, to be divided into two days, or three equal parts in each four months, instead of four days, as in stat. 44 *G.* 3. is provided; and where a corps of yeomanry or volunteer cavalry shall attend at muster or exercise five days successively, the same shall entitle each individual so attending to be returned as effective, the same as if he had attended the whole number of six days,] unless he shall have been absent with leave, or shall have been prevented by actual sickness, such sickness to be certified by some medical practitioner, or otherwise proved to the satisfaction of his commanding officer; nor unless such person shall be returned by his commanding officer, in manner directed by this act, as an effective member, and as having taken the oath of allegiance.

56 G. 3. c. 39.

§ 6. Provided, that in every case in which any corps of yeomanry or volunteers, requiring any arms or accoutrements at the expence of H. M., shall not have been supplied in sufficient time to have enabled the members of such corps, or any part thereof, to have attended properly armed and accoutred, every member who shall have duly attended muster and exercise, although without arms or accoutrements, shall nevertheless be deemed to be an effective member thereof, in like manner as if he had attended properly armed and accoutred.

Commanding officers may grant leave of absence; and such persons, completing their attendance, shall be entitled to exemption as effectives.

§ 7. And any commanding officer may, if he shall think proper, on application for that purpose, grant leave of absence to any effective member who may be prevented from attending in any period of four months the number of days of muster and exercise required by this act, and to return or certify such person so absent in the next return or certificate; who shall in such case continue entitled to exemption as an effective member; provided he shall, in the succeeding four months, attend such number of days of muster and exercise as will complete the full number of eight days' attendance, if cavalry, [now reduced to six for a year, by stat. 56 *G.* 3. *c.* 39. *supra,*] or sixteen days, if infantry, in the whole period of eight successive months; and in default of such respective attendance, in such eight successive months, he shall be struck out of the list of effective members, and returned in the muster-roll as non-effective, and shall be no longer entitled to any exemption under this act, while so returned.

Members attending the full number of days yearly, though not in equal proportions, to be entitled to exemption.

§ 8. Provided also, that if any effective member of any corps shall have attended at the usual muster and exercise thereof, the full number of twelve days if cavalry, [now reduced to six by stat. 56 *G.* 3. *c.* 39. *supra,*] and twenty-four days if infantry, within any period of four successive months, commencing from any day appointed by this act for making a return, or within any two successive periods of four months, each commencing as aforesaid; every such person shall continue entitled to exemption, and shall be returned as an effective member for the periods for which he

would have been entitled to exemption, in case he had, within such first period of four months attended at the muster and exercise of such corps, four days, [now two,] if cavalry, and eight days if infantry, and the like number of days in each of the two succeeding periods, according to the provisions of this act. 44 G. 3. c. 54.

Commanding officers to make returns of their corps at certain periods.

A.

B.

§ 9. All commanding officers of yeomanry and volunteers shall on the first days respectively of *April, August,* and *December,* in every year, or within fourteen days after, make returns (A) to the clerks of the general meetings of lieutenancy, for their use, and certify the same to be true, in the form (B) annexed; and every commanding officer shall in such return specially state the number of men on the establishment, and also the number of supernumeraries allowed in such corps: and shall also distinguish the effective from the non-effective members, and shall state the names of all such as have been admitted into, and all such as have joined, their respective corps since the last day appointed by this act for making a return, and the names of all persons absent on leave, and also the names of all persons who shall have been discharged from or shall have quitted such corps since the last return; and shall also in all cases where any exemptions are allowed under this act, distinguish the persons entitled from such as are not entitled thereto, either by reason of the number of men enrolled in such corps exceeding the allowed establishment thereof, or otherwise; and shall, in all cases where any arms required by any corps at the expense of H. M. shall not have been supplied, state such circumstance specially at the foot of the return; and shall also at such periods make to H. M.'s principal secretary of state, and to the general officer commanding the district (when any such shall be appointed), accurate returns of their respective corps, specifying the numbers of effective and non-effective men at the time of making such returns; and all such last-mentioned returns shall be made, as near as may be, according to the description of the corps, in the form in which monthly military returns are usually made.

Commanding officers to give certificates, entitling men to exemptions in certain cases.

C.

§ 10. The commanding officer of any corps, at the time of returning every muster roll thereof, shall (if required) give to every effective member, who shall be resident or liable to be balloted for the militia or any other additional force in any other county than that in which such muster rolls shall be returned, a certificate (C); which, on being delivered to the clerks of general meetings of lieutenancy for the county where such member shall reside, shall entitle him to exemption from service under this act as effectually as if he had been returned in a muster roll under this act.

Provisions relative to exemptions from horse and hair powder duties.

§ 11. All field officers and adjutants of volunteer corps, and every person serving in any corps of yeomanry or volunteer cavalry, who shall be returned in any muster roll, or certified as an effective member, and as having used any horse for such service during such days of muster and exercise; and every person providing a horse for any other person serving as an effective member in such corps, who shall be returned as effective, and as having used such horse for such service during the days of muster and exercise, shall be exempt from the payment of any duties in respect of such horse so long as such horse shall be so used by an effective member; and every person enrolled and serving in

44 G.3. c.54. any corps of yeomanry or volunteer cavalry or volunteer infantry, who shall be returned in any such muster-roll under this act, as an effective member thereof, shall be exempt from the payment of the duty chargeable in respect of such person wearing hair powder, so long as he shall continue an effective member of such corps; but every such exemption shall be claimed in the manner in which exemptions are directed to be claimed by stat. 43 *G.3. c.*161. Provided, that the commanding officer of every such corps shall, between the 5th of *April* and the 5th of *May* in every year, deliver to any surveyor or inspector of taxes of the district, wherein such corps shall be enrolled, or of any adjoining district,

E. a certificate (E); and in case the same shall be a corps of yeomanry or volunteer cavalry, and any of the horses used by any effective member thereof for service therein, shall be provided by any other person, such commanding officer shall also insert in such certificate the names of the persons who shall provide any such horses, and shall also annex to such certificate affidavits of the several persons serving in such corps, for whom any horses shall be provided, declaring by whom the same are provided; and every person claiming to be exempted from the duties shall be chargeable thereto, unless such certificate and affidavits shall have been delivered pursuant to this act; which certificates, made up and certified according to the form in the schedule, shall be sufficient for the purpose of proving such claims to exemption. But, if from any variation of circumstances or other reason, the forms hereby required cannot be strictly adhered to, any instrument of a similar import may nevertheless be admitted and received in proof, at the discretion of the commissioners for the district wherein such corps shall be enrolled; and when so admitted and received, shall be as valid as if a certificate and affidavit had been delivered according to the directions of this act.

§ 12. But no volunteer shall be entitled to any exemption under this act, unless the commanding officer of the corps shall at the time of transmitting the muster-rolls certify at the foot thereof that such corps has been inspected, once at least within the preceding four months by some general or field officer of the king's regular forces; or if no such inspection shall have taken place, that such corps has been ready and willing to be so inspected.

No toll to be demanded from field or staff officers of volunteers going to exercise.

§ 13. No toll shall be demanded or taken at any turnpike gate for any horses, mares, or geldings, rode by any person belonging to any corps of yeomanry, or any field or staff officer of volunteers, going to or returning from exercise; provided that every such person be dressed in the uniform of his corps, and be armed and accoutred according to the regulations provided for such corps, at the time of claiming the exemption.

Clerks of the general meetings to transmit extracts of muster rolls to the subdivision clerks, and abstracts to the secretary of state.

§ 14. The clerks of the general meetings of the several counties shall, within ten days after they shall receive such certificate and returns, transmit to the clerks of the subdivision meetings, extracts therefrom, containing the names of the persons in each subdivision returned therein as effective members; and shall also, three times in every year, transmit to the principal secretary of state, abstracts (D) of the several muster rolls so sent to them under this act; which abstracts shall express the names of the several corps, the number of persons enrolled and serving in each,

D. and the number of persons therein exempted from serving in the

militia; and if any such clerk shall omit or neglect to transmit such abstracts within six weeks after the period prescribed by this act for making returns, or shall knowingly or wilfully transmit any false abstracts, he shall forfeit 50*l.* for every offence, to be recovered as any penalty may be recovered under any militia acts, and to be applied to the use of H. M.

44 G. 3. c. 54.

Penalty for not transmitting abstracts.

§ 15. And every commanding officer of any corps of yeomanry or volunteers, who shall knowingly make any false return of any muster-roll of such corps, or give any false certificate under this act, shall forfeit 200l. for every offence, to be recovered in like manner.

Penalty on commanding officers making false returns.

§ 17. And nothing herein contained shall exempt any person enrolled or serving in any corps from being balloted to serve in the militia; and the deputy-lieutenants, at their subdivision meetings shall enter in a list the names of all persons chosen by ballot to serve in the militia, during the periods of their being exempt from service under this act, in the order in which they shall be so chosen, and shall, notwithstanding such exemptions, give notice thereof to the persons chosen; but shall at the same time apprize them that they are exempted from such service so long as they shall continue effective members of such corps of yeomanry or volunteers; and every such person shall, in the order in which he shall have been entered on such lists, fill up any vacancy that may then be, or may thereafter arise, in such militia, in the subdivision for which he shall originally have been balloted, and shall immediately on any vacancy arising be enrolled to serve or find a substitute to serve in the militia, for such full period of service, to commence from the time of enrolment; and every such person refusing or neglecting to serve or find a substitute, shall be liable to all the penalties contained in any act relating to the militia, for so neglecting or refusing. But such person who may, at the time of his quitting or being discharged from any corps, be entitled to any other exemption from serving in the militia, shall not be deprived of the full benefit thereof.

Volunteers not exempted from ballot; and liable to serve on being discharged for misconduct.

§ 19. And where any person who shall, on account of changing his place of residence, quit any corps in which he shall have been an effective member, and entitled to exemption up to that time, shall within ten days afterwards enrol himself in any other, he shall, upon producing to the commanding officer of the corps in which he shall have last enrolled himself a certificate of the number of days on which he shall have attended the musters and exercise of the corps which he has so quitted, be entitled to the benefit of the number of days specified therein, and shall (on completing the number of days at muster and exercise required by this act, in the corps in which he shall have last enrolled himself) be returned as an effective member of such corps.

Volunteers quitting one corps, and enrolling themselves in another, to have certificates of their attendance, and have the benefit thereof in the latter corps, &c.

3. Provisions relative to Corps of Yeomanry and Volunteers, when in actual Service, or assembled to do Military Duty.

§ 22. In all cases of actual invasion, or appearance of any enemy in force on the coast of *G. B.*, or of rebellion or insurrection arising or existing within the same on the appearance of any such enemy, or during any invasion, all corps of yeomanry and volunteers shall, whenever summoned by the lieutenants of the counties, vice-lieutenants or deputy-lieutenants, or upon the

Volunteers, when in actual service, subject to mutiny acts and article of war.

44 G. 3. c. 54. making of any general signals of alarm, forthwith assemble within their respective districts, and shall be liable to march according to the terms and conditions of their respective services, whether the same shall extend to any part of *G. B.*, or be limited to any district, county, city, town, or place therein; and all persons enrolled in such corps, not labouring under any infirmity incapacitating them from military service, and not holding a commission or serving in any of H. M.'s other forces, or in any other such corps of yeomanry or volunteers, and actually joining such corps, who shall refuse or neglect to join their respective corps, and to assemble and march therewith, upon any such summons or general signal of alarm, shall be deemed deserters, and shall be subject to punishment as such: and in such cases all such corps shall be subject to the provisions of the mutiny act, and of the articles of war.

Volunteers, while on military duty, to be subject to mutiny acts.

§ 23. And whenever any yeomanry or volunteers shall, with H. M.'s approbation signified through the secretary of state, voluntarily assemble to do military duty upon any appearance of invasion, or for the purpose of improving themselves in military exercise, (except in the case of cavalry, according to § 46.) or shall voluntarily march in pursuance of an order from the lieutenant or sheriff of the county, to act within the county or adjacent counties, for the suppression of riots or tumults, they shall, while so assembled, be subject to military discipline, to the mutiny act, and articles of war.

Corps may be put under the command of general officers.

§ 24. When any corps shall be assembled, or marched on any summons or general signal of alarm or doing military duty as aforesaid, H. M. may order them to be put under the command of such general officers as he may appoint, or as may be then commanding in the district in which such corps shall be assembled, but they shall be led by their respective officers under such command as aforesaid, and no effective member of any such volunteer corps shall be liable to be placed in any regiment of regulars, militia, or fencibles, without his free consent first obtained.

When volunteers are assembled on summons of the lieutenant, the receiver general shall pay to each captain two guineas for every man; and when voluntarily assembled, the treasury may order a guinea for each to be paid in like manner;

§ 36. And when any corps shall have so assembled, the receiver general for the county to which such corps shall belong, shall pay to the captain or other commanding officer of any troop or company two guineas, for the use of every volunteer who shall so assemble; and whenever any such corps shall hereafter voluntarily assemble to do military duty upon any appearance of invasion, or for the purpose of improving themselves in military exercise under this act, the commissioners of the treasury may direct any sum, not exceeding one guinea for every volunteer who shall so assemble, to be paid to such captain or commanding officer, which sum shall, upon every such order, be paid to him by every such receiver general; and the money so received, by any captain or other commanding officer, or so much thereof as he shall think necessary, shall be laid out in providing necessaries for each volunteer; and such captain or commanding officer shall within one month after the receipt of such money, account to the several persons for whose use the same shall have been received, how the same hath been applied or disposed of, and shall, at the time of settling such account, pay the remainder, if any, to the persons entitled thereto; but nothing herein contained shall extend to authorise the captain of any troop or company to de-

and not to draw any for the use of men not desiring it.

mand, draw for, or receive any such sum, or any part thereof, for the use of any person or persons serving therein, who shall not desire to be entitled to the benefit thereof. 44 G. 3. c. 54.

§ 37. And all persons enrolled in any corps of yeomanry or volunteers, when assembled on any of the occasions above stated, and doing military duty, with the approbation of H. M., shall be entitled to pay during the period of their so remaining assembled as aforesaid, in such manner and after such rates, according to their respective ranks and situations, and to be quartered and billeted, in like manner, in every respect, and under and subject to the same regulations as H. M.'s other forces, as far as the same shall by H. M. be deemed applicable to yeomanry and volunteer corps.

Volunteers when assembled on invasion, &c. to receive pay and be billeted as other forces.

§ 38. Whenever any corps of yeomanry or volunteers shall be so assembled or marched as aforesaid, on any invasion or appearance of an enemy in force upon the coast, or in case of any rebellion or insurrection arising or existing as aforesaid, or of riots or tumults, or for the purpose of voluntarily doing military duty under this act, all persons enrolled and who shall join on such assembling and marching as aforesaid, and who shall leave families unable to support themselves, shall, during the period of their absence or service on military duty, be entitled to such and the like relief for their wives and families, and under such and the like circumstances, as is provided for the families of militia-men when called out into actual service; and all sums which shall be paid to the wives and families of such men, under any order for that purpose, shall, upon delivery of a quarterly account of the payment thereof, certified and signed by two justices of the county in which such relief shall be given, be repaid to the overseer or parish officer, who shall have advanced the same, by the receiver-general of such county, out of any public money in his hands.

While volunteers are embodied, their families shall be entitled to the same relief as the families of militia-men.

Monies advanced to such families to be repaid to the overseers by the county receivers general.

§ 39. And after the defeat and expulsion of the enemy from *G. B.*, and suppression of any rebellion or insurrection, all corps of yeomanry or volunteers which shall have been assembled and marched out of their respective counties, shall forthwith be returned to the same, and one guinea shall be paid, under the direction of any general or other superior officer under whose command such corps shall then happen to be, to every person therein so permitted to return home, who shall be willing to receive the same, over and above the usual rate of pay to which such person shall be entitled, in order the better to enable him to return to his parish.

After defeat of the enemy, the volunteers shall be returned to their respective counties, and a guinea paid to each man willing to receive it.

By stat. 57 *G.* 3. *c.* 44. § 1. Persons enrolled in corps of yeomanry or volunteer cavalry, when assembled and doing military duty for the suppression or prevention of riots or tumults in aid of any justices, shall be entitled to be quartered and billeted in like manner as H. M.'s forces. 57 G. 3. c. 44.

By § 2. No officer entitled to half-pay shall forfeit the same during the time he shall serve or receive pay as captain, lieutenant, or cornet, in any corps of yeomanry or volunteer cavalry, and to entitle him to his half-pay, shall take the following oath:—

I A. B. *do swear, that I had not between the ——— and the ——— any place or employment of profit, civil or military, under his majesty, besides an allowance of half-pay, save and ex-*

57 G. 3. c. 44. *cept my pay or allowance* [as the case may be] *for serving in the* ——— *corps of yeomanry or volunteer cavalry of the* ——— *as captain, lieutenant, or cornet,* [as the case may be].

Members not liable to serve as constables.

§ 3. No officer, non-commissioned officer, or effective member of any yeomanry or volunteer cavalry shall, during the period of his being enrolled in, and an effective member thereof, be compellable or compelled to serve the office of constable in the parish to which he belongs.

4. Exercise of Corps of Cavalry.

44 G. 3. c. 54. When corps of cavalry shall be desirous of assembling under the command of their own officers, the county lieutenant, with the approbation of H. M., may make an order for that purpose.

By stat. 44 *G.* 3. *c.* 54. § 46. Whenever the persons enrolled in any corps of yeomanry or volunteer cavalry, whether any infantry be attached to such corps or not, or the majority of them, when not summoned upon actual service, or voluntarily assembled for the purpose of doing military duty, and subjected to military discipline, under the provisions of this act, shall, through their commanding officer, signify in writing to the lieutenant of the county wherein such corps shall be raised, or in case of vacancy, or in his absence, to the vice-lieutenant or deputy-lieutenants executing his office, their desire to assemble under the command of their own officers, at any convenient place within the same county, for the purpose of being trained and exercised for any time not exceeding fourteen days, either successively or at intervals, within the space of twelve months, and either in separate corps, or together with any other corps of yeomanry or volunteer cavalry, who shall also have signified their desire of assembling for that purpose in like manner, or with any regiment, troop or troops of H. M.'s regular forces of cavalry, in case his H. M. shall think proper to give directions to such forces for that purpose; such lieutenant, vice-lieutenant, or deputy-lieutenants respectively, in pursuance of such desire, and with the approbation of H. M., signified by his principal secretary of state, may make an order for assembling such yeomanry or volunteer cavalry, and likewise may direct an order to any justice of the county where such corps of yeomanry or volunteer cavalry shall be appointed to assemble, specifying the place at which, and the time during which such corps are to continue so assembled; and the justice to whom such order shall be directed shall issue his precept to the constable, or other peace officer of the place where such corps are to be assembled, for quartering and billeting the non-commissioned officers, trumpeters or buglemen, and privates, upon such persons and in such houses, situate in or near the place or places specified in such order, as H. M.'s forces may by law be quartered and billeted upon; and from and after the receipt of such precept, such constable or other proper officer may billet them accordingly: but nothing herein contained shall extend or be construed to extend to subject any such corps to the mutiny act or articles of war while assembled in the manner and for the time above specified.

May be billeted in the same manner as the regulars.

The lieutenant, after fixing the day and place of exercise, to certify certain particulars to the

§ 48. And whenever the lieutenant or deputy-lieutenants of any county shall have fixed the day and place of exercise for any corps of yeomanry or volunteer cavalry, he or they shall, as soon as may be, certify the same to the secretary at war or his deputy, specifying the number of men, and the number of days appointed for ex-

ercising them, not exceeding fourteen days; and the secretary at war or his deputy, is hereby required, within fourteen days after the receipt of such certificate, to cause to be issued and paid to the officer having the command of each corps, at the rate of 2*s. per* day for each member who shall attend the place of exercise, and 1*s.* 4*d. per* day for each horse, mare, or gelding, belonging to such corps, and used in exercise on that day.

44 G. 3. c. 54. — secretary at war, who shall order pay to be issued.

§ 49. The commanding officer of yeomanry or volunteer cavalry, receiving pay during the period of their exercise, shall make up an account of all monies paid to or by him on account of such exercise, in the following form:

Commanding officers to make up an account.

County of —— Dr.	*l. s. d.*	Per Contra —— Cr.	*l. s. d.*
To cash received for —— days' pay of —— men -	——	Paid —— yeomanry men for their attendance at the place of exercise, on the days appointed, being —— days' pay.	——
To do. for —— days' allowance for —— horses -	——	Paid —— allowance for —— horses used in exercise for —— days - - -	——

Which account shall be signed by such commanding officer; who shall, within ten days after the exercise is finished, deliver such account, and pay the balance (if any) to such person as the secretary at war or his deputy shall direct.

But by stat. 44 *G.*3. *c.*94. No commanding officer shall be deemed an accountant by reason of any monies so paid or to be vested in him for any of the purposes above mentioned.

44 G. 3. c. 94.

5. Arms, Subscriptions, and Rules.

By stat 44 *G.*3. *c.* 54. § 42. The commanding officer of any corps receiving arms and accoutrements supplied at the public expence or by subscription, may appoint a proper place, in the parish in which his corps shall be formed, or in each of the different parishes or places, if more companies than one are formed in different parishes, and united in one corps, as the case may require, for depositing and safe keeping of the arms and accoutrements of his corps, and also may appoint proper persons to repair and keep such arms in good condition; and any two or more deputy-lieutenants of the subdivision, once in every year at the least, may view such arms and accoutrements, for the purpose of ascertaining the state and condition thereof; and all reasonable expences incurred in placing and keeping them clean and in proper repair, order, and condition, if approved of by two deputy-lieutenants, or one deputy-lieutenant and one justice of the subdivision, shall on delivery to the receiver-general, of a quarterly, half-yearly or yearly account thereof, signed and approved as aforesaid, together with the certificate of the commanding officer of the corps, or captain of the company to which such arms shall belong, that they are in good repair and condition, be paid by such receiver-general out of any public monies in his hands, and shall be allowed in his account: but no such expence incurred shall exceed in amount such

44 G.3. c.54. Commanding officers to appoint proper places and persons for keeping the arms and accoutrements.

Expence of keeping them how to be defrayed.

44 G. 3. c. 54. sum as H. M. shall direct, by any order communicated through the principal secretary of state, to the lieutenant or deputy-lieutenants of the county.

Arms to be marked.

§ 44. And all arms delivered out of the public stores, or furnished at the public expence, for the use of any corps of yeomanry or volunteers, shall be marked distinctly in some visible place with the letter (V.) and the initial of the county to which such corps shall belong; and in case any man shall sell, pawn, or lose any arms, accoutrements, clothing, or ammunition delivered to him, or shall wilfully damage any such arms or accoutrements, he shall for every offence forfeit not exceeding 40s.; and in default of payment, any justice residing in or near the place where the offence shall be committed, may take cognizance of the same, and commit the person convicted of such offence before him to the next gaol or house of correction, to be kept to hard labour not exceeding one week, or until he shall have paid the penalty.

Penalty on selling, pawning, or damaging them.

Penalty for buying such arms or accoutrements.

§ 45. And if any person shall knowingly and wilfully buy, take in exchange, conceal, or otherwise receive any arms, accoutrements or clothing, or any public stores or ammunition delivered for the use of any corps of yeomanry or volunteers, he shall forfeit for every offence 10*l*., and in default of payment and of sufficient goods and chattels whereon to levy such penalty by distress, any justice before whom he shall be convicted, shall commit the offender to the common gaol or house of correction for three months, or until payment of the fine.

Subscriptions, arms, &c. vested in the commanding officer.

§ 50. And all money subscribed by or for the use of any corps, and all arms, stores, ammunition, drums, fifes, or musical instruments, or other articles whatever, belonging to or used by any such corps, not being the property of any particular individual, shall be vested in the commanding officer thereof, for all purposes of indictment or action, criminal or civil, in law or equity, and shall for such purpose be deemed to be his property, and may be laid so in any indictment, or may be sued for and recovered as such, in any action relating thereto; and no indictment or action shall be discontinued or abated by the death, resignation, or removal of any commanding officer, but the same may be proceeded in by the succeeding commanding officer.

If subscriptions or fines be not paid, a justice may direct double the amount to be paid, which may be levied by distress.

§ 51. Where any volunteer shall neglect or refuse, on demand made for that purpose, to pay any sum subscribed or required by any rules of such corps to be subscribed by him towards any expences thereof, or to pay any fines or penalties incurred under any of them, in such case any justice residing in or near to the place where such corps shall be, on application made for that purpose by any commanding or field officer, or adjutant, or serjeant-major, under any order of the commanding officer of any such corps, and proof thereof, may direct double the amount thereof to be paid as a penalty; and if such person shall refuse or neglect to pay the same for seven days, then may cause the same to be levied by distress and sale of the defaulter's goods and chattels, by warrant under his hand and seal, rendering the overplus, if any, on demand, after deducting the charges of such distress and sale to the persons whose goods and chattels shall have been so distrained and sold; and the sums so levied shall go to the general stock of such corps, to be applied in the general expences thereof, in like manner as any subscription or money may be applied; or where there shall be no such subscription or stock, then to any such

purposes as the commanding officer may think fit: but such justice of peace may mitigate any accumulated fines or penalties, in such amount as he shall think fit, having regard to the circumstances and situation of the party incurring the same; so that the amount thereof shall not be less than one half of the full amount of such accumulated fines and penalties. 44 G.3. c.54. Justice may mitigate penalties.

§ 52. And every person who shall have received, or have in his custody or possession, any arms, accoutrements, clothing, ammunition or stores, or drums, fifes, or musical instruments, or other articles furnished from the public stores, or at the public expence, or at the expence of any subscription for providing such articles, and who shall refuse or neglect, on being required by the commanding officer for the time being, or by his direction, to deliver up any such arms, accoutrements, or other articles, shall, on being convicted thereof before any justice of the county within which such arms, accoutrements, &c. shall be, forfeit 10*l*. for every offence, and double the value of the arms, accoutrements, or other articles so detained, to be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice; and for want of sufficient distress, such justice is required to commit such offender to the common gaol of the county, or place where the offence shall have been committed, for any time not exceeding two months; and the monies arising by such penalty shall be applied to the use of H. M., his heirs and successors. Penalty on persons refusing to give up arms.

§ 56. And no future rules or regulations shall be valid or binding on any corps for any purposes of this act, or for any other purpose, unless the commanding officer shall transmit the same to the lieutenant or vice-lieutenant of the county in which such corps shall be formed, and unless the said lieutenant or vice-lieutenant shall submit the same to the principal secretary of state; and such rules and regulations so transmitted and submitted, shall, if not disallowed by H. M. within twenty-eight days after the receipt thereof, be considered as approved and confirmed; and the lieutenant or vice-lieutenant shall signify such approbation and confirmation to the commanding officer, to be communicated by him to his corps; and such rules and regulations so transmitted, shall be binding and valid. No future rules to be valid unless approved of by the king.

§ 57. But nothing in this act contained shall extend to prevent H. M. from annulling at any time any rules or regulations which may have been or shall be made respecting any corps of volunteers. The king may annul any of the rules and regulations.

6. Privileges and general Provisions.

By stat. 44 *G. 3. c.* 54. § 40. And all commissioned officers of corps of yeomanry or volunteers, who shall be disabled in actual service, shall be entitled to half pay, according to their ranks; and all non-commissioned officers, drummers, and privates, so disabled, shall be entitled to the benefit of *Chelsea* Hospital; and the widows of all such commissioned officers killed in service shall be entitled to receive such pensions for life as are given to widows of officers in H. M.'s regular forces. Commissioned officers disabled in service to be entitled to half pay, and non-commissioned officers, &c. to *Chelsea Hospital*; and widows of officers killed to pensions for life.

§ 41. And no officer who is entitled to half pay shall be deemed to forfeit the same during the time he shall serve and receive pay as adjutant or quarter-master of any corps of yeomanry or volun- Half pay may

44 G.3. c.54.

be received by adjutants and quarter-masters on taking the following oath.

teers, but the same shall nevertheless continue; and instead of the oath usually required of half-pay officers, to entitle them to the receipt of their half-pay, every such officer so entitled to half-pay, and serving as aforesaid, shall take the following oath: —

Oath.

I A. B. do swear that I had not, between the ——— and the ———, any place or employment of profit, civil or military, under his majesty, besides my allowance of half pay as a reduced ——— in ——— late regiment of ———, save and except my pay as adjutant or quarter-master, [as the case may be] *for serving in the ——— corps of yeomanry or volunteers of the ———* [as the case may be].

Clerk to general and subdivision meetings in England to be rewarded for their trouble.

§ 54. The respective clerks to the general meetings, and clerks to subdivision meetings, shall receive such reward for their trouble in the execution of this act, and for which they shall not be entitled to any reward under any militia laws, as any five deputy-lieutenants assembled at any meeting held for that purpose shall think proper; such reward to be paid and allowed as any rewards to such clerks respectively are paid and allowed under any militia act.

Acceptance of commissions not to vacate seats in parliament.

§ 58. No member of parliament, who shall accept a commission in any corps of yeomanry or volunteers, shall be deemed to vacate his seat on that account.

Returns, &c. though varying from form prescribed, to be valid.

§ 59. And the several forms of returns, certificates, and schedules annexed shall be deemed valid and effectual for the purposes of this act; but if, from any variation of circumstances or other reasons, such forms should not be strictly adhered to, instruments of a similar import shall be admissible and held valid.

Provisions relative to counties to extend to all other places, &c.

§ 60. And all provisions, matters, and things whatever in this act contained, relating to counties, shall extend to all divisions and places; and all provisions and directions relating to corps shall extend to all independent troops of yeomanry or volunteer cavalry and companies of infantry, as fully as if they were repeated in every such provision and clause.

A. Form of Muster Roll.

To *A.B.* His Majesty's lieutenant for the ——— of ———.

MUSTER ROLL of the persons enrolled and serving in the ——— of ——— commanded by ———.

Effectives; (*and if entitled to Exemption, say,* entitled to Exemption.)				Effective Supernumeraries (if any), not entitled to Exemptions.				NON-EFFECTIVES.			
No.	Parish.	Name.	When enrolled.	No.	Parish.	Name.	When enrolled.	No.	Parish.	Name.	When enrolled.
1.											
2.	*A.*	*A. B.*									
3.		*C. D.*		Effective Members entitled to Exemptions, Absent on Leave.							
4.		*E. F.*									
5.		*G. H.*									
6.											
7.											
8.											
9.	*B.*	*L. M.*									
10.		*N. O.*		No.	Parish.	Name.	When enrolled.				
11.		*P. Q.*									
12.											
13.											

N. B. Discharged or quitted since the date of the last muster roll:

Establishment allowed A. B.

Supernumeraries allowed C. D. *&c.*

———

Total number ———

Total number in the corps exempt under this act from serving in the militia or other additional force - - -

Ditto, not exempt from serving in the militia or other additional force - - - -

———

Total number of men enrolled in the corps -

———

I do hereby certify, that the above corps [or *company*, as the case may be], *was inspected on the* ——— *day of* ———, *by* ———, or, *has been ready and willing to be inspected in the last four months.*

Signed, A. B. Commanding officer.

C. D. Adjutant, *or* serjeant-major.

B. Commanding Officer's Certificate, to accompany the Muster Roll.

I K. L., *commanding officer of the* ———, *do hereby certify upon my honour, in pursuance of an act of parliament passed in the forty-fourth year of his late majesty's reign, intituled,* An Act (*a*)

(*a*) An act to consolidate and amend the provisions of the several acts relating to corps of yeomanry and volunteers in *G. B.*; and to make further regulations relating thereto.

[here insert the title of this act] *that I have not, to the best of my knowledge and belief, inserted, or caused to be inserted in the above muster roll, as an effective man, the name of any person who has not duly attended, properly armed and accoutred and mounted* [if cavalry] [if arms and accoutrements have been supplied] *at the muster and exercise of the said corps* [or *company*, as the case may be], *as required by the said act, and who has not taken the oath of allegiance, or been absent on leave given in pursuance of the said act, or prevented by actual sickness, as has been certified to me by a medical practitioner, or as has been otherwise proved to my satisfaction, and who is not an effective man.*

Signed, K. L.

Dated the Commanding officer.

[*If arms, accoutrements, or clothing have not been received, such circumstance must be specially certified.*]

C. Certificate of Exemption.

To *A. B.* his Majesty's Lieutenant for the ——— of ———.

I K. L., *commanding officer of the* ——— *of yeomanry* or *infantry* [as the case may be] *serving in the county of* ———, or *city of* ———, [as the case may be] *do hereby certify, that* C. D., *of* ———, [his description and parish] *is an effective member of the said corps* or *company* [as the case may be] *within the provisions of an act passed in the forty-fourth year of the reign of his late majesty G. 3.*

Signed, K. L.

Dated the Commanding officer.

D. Abstract of Muster Rolls to be transmitted by the Clerks of the General Meetings of Counties, to his Majesty's principal Secretary of State.

To ——— his Majesty's principal Secretary of State.

ABSTRACT of muster rolls of corps and companies of yeomanry and volunteers, within the ——— of ——— received by me, *O. P.*, his majesty's lieutenant for the same, since the ——— day of ——— in the year ———.

No.	Names and Descriptions of Corps.	Number of Persons enrolled and serving therein.	Number of Persons exempt from Militia and Army of Reserve	When inspected, or if willing to be so.
1.	Yeomanry	600	200	Inspected 25th Oct. 18—.
2.	Do.	700	100	
3.	Infantry	1000	600	Not inspected, but willing to be so.
4.	Artillery	700	400	Do.
	Do.			
&c.	&c.	&c.	&c.	

E. Certificate for Exemption from Horse and Hair-powder Duties.

I K. L., commanding officer of the ———, do hereby certify, in pursuance of an act passed in the forty-fourth year of the reign of his late majesty G. 3. *intituled,* An act [here insert the title of the act,] *that the several persons herein named and described are severally enrolled and serving in the said corps as effective members thereof and were effective members up to and on the fifth day of* April *preceding the date of this certificate.*

Signed, K. L.
Commanding officer.

Dated the ——— day of ———.

Mill:

[31 G. 2. c. 29. — 9 G. 3. c. 29. — 35 G. 3. c. 102. — 36 G. 3. c. 85. — 41 G. 3. (U. K.) c. 24. — 43 G. 3. c. 58.]

Toll for grinding.

BY an ancient ordinance, [See *Haw. stat. Vol.* 1. *p.* 181.] the toll of a mill shall be taken according to the custom of the land, and according to the strength of the water-course, either to the twentieth or four-and-twentieth corn.

And yet in some places the millers do claim and take the sixteenth part; and where the custom hath been so used time out of mind, perhaps it may be good and warrantable. *Dalt. c.* 112. *p.* 259.

And Mr. *Dalton* says, the miller ought to take but one quart for grinding of one bushel of hard corn, but if he fetch and carry back the grist to the owner, he may take two quarts of hard corn; and this hard corn is intended of wheat, rye, meslin (which is wheat and rye mixed). And for malt, the miller shall take but half so much toll as he taketh for hard corn, that is, one pint in the bushel, for that malt is more easily ground than wheat or rye; but if the miller do fetch to his mill, and carry back the malt to the owner's house, then the miller also shall have double toll. *Dalt. c.* 112. *p.* 259.

But by *Holt* C. J. the toll of a mill must be regulated by custom; and if the miller take more than the custom warrants, it is extortion: but if it be a new mill, there the miller is not restrained to any certain toll; but the persons who will have their corn ground there, must comply with the miller's demands; and whatsoever he takes it is not extortion, because it is the voluntary agreement of the parties. 1 *Ld. Raym.* 149.

Tenants may be bound to grind at the lord's mill.

In some places the tenants are bound to have their corn ground at the lord's mill. *Hix* v. *Gardiner,* 2 *Bulst.* 195. In an action on the case for erecting a mill, the lord declared upon a custom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the custom, and this was adjudged a good custom: And suit to a mill may be by reason of tenure or service, and also by custom, and so may well bind strangers.

A new-erected house within the precincts is within the custom of multure; and none may grind elsewhere, but in case of excessive toll, or that the grist cannot be ground in convenient time. *Hardr.* 177.

Flour ground elsewhere than at the lord's mill.

A custom which binds the tenants and resiants within a manor to grind at the lord's mill "all *their* corn and grain which they use in a ground state in their separate dwellings within the manor," does not prevent them from buying and using in their dwellings *flour* produced from corn ground at other mills. *Richardson and another* v. *Walker, E.* 1824. 2 *B.* & *C.* 827.

Pulling down a mill.

Where the lord of a manor had two mills, and the tenants and resiants were by custom bound to grind all their malt which they used in their dwellings at the said mills, but might take it to either at their own option: Held, that the lord, having pulled down one of the mills, had thereby suspended the custom. *Richardson and another* v. *Capes, E.* 1824. 2 *B.* & *C.* 841.

31 G.2. c.29. Miller suspected of adulterating meal or flour.

By stat. 31 *G.*2. *c.* 29. § 29. If information shall be given on oath to any magistrate or justice, that there is reasonable cause to suspect that any miller who grinds any grain for toll or reward, or any person who dresses, bolts, or in anywise manufactures any meal or flour for sale, within the jurisdiction of the magistrates or justices in the act mentioned, doth mix up with or put into any meal or flour ground or manufactured for sale, any mixture, ingredient, or thing whatsoever, not the genuine produce of the grain such meal or flour shall import and ought to be, or whereby the purity of any meal or flour in the possession of such miller or mealman shall be in anywise adulterated; in such case it shall be lawful for any such magistrate or justice, or for any peace officer authorised by the warrant of any magistrate or justice within their jurisdictions, at all seasonable times in the day to enter into any house, mill, shop, bakehouse, stall, bolting-house, warehouse or out-house of any such miller or mealman, and to search whether any such mixture, ingredient, or thing shall have been mixed up with or put into any meal or flour as aforesaid, or whereby such meal or flour shall be in anywise adulterated; and if on such search it shall appear that any offence has been committed in any mill, bolting-house, or other place allowed to be searched, contrary to this act, then it shall be lawful for any magistrate or justice, or peace officer as aforesaid, to seize any meal or flour, deemed on such search to have been adulterated; and all ingredients found or deemed to have been used or intended for use in or for any such adulteration; and such as shall be seized by such officer shall with all convenient speed be carried to some magistrate or justice as aforesaid; and if any magistrate or justice who shall make such seizure, or to whom any such seizure shall be brought, shall adjudge any mixture or ingredients not the genuine produce of the grain any such meal or flour shall import or ought to be shall have been put therein, or that the purity of such meal or flour was thereby adulterated, then such magistrate or justice may dispose of the same, as in their discretion they may from time to time think proper.

And by § 30. Every miller, mealman, &c. in whose house, mill, &c. any mixture or ingredient shall be found, which shall be adjudged by any magistrate to have been lodged there with intent to have adulterated the purity of any meal or flour, shall on

conviction by confession, or oath of one witness before any such magistrate or justice, forfeit not exceeding 10*l.* nor less than 10*s.*, unless he shall make it appear that such mixture, &c. was not there for such purpose as aforesaid, but was there for some lawful purpose; and the justice or magistrate convicting may, out of the money forfeited, cause the offender's name, place of abode, and offence to be published in some newspaper in or near the county, city, or place. 31 *G.* 2. *c.* 29.

§ 31. The wilfully obstructing such search, or opposing the same, or the carrying away the mixture, &c. incurs a forfeiture not exceeding 5*l.* nor less than 20*s.*

§ 32. No miller shall act as a justice or magistrate herein.

§ 34. For the more easy recovery of the penalties and forfeitures in this act mentioned, any justice may summon before him any party accused under this act; if he shall not appear, or offer reasonable excuse for his default, the justice shall issue his warrant for apprehending him: and on appearance of the party accused, or if he do not appear on notice given or left for him at his usual abode, or if he cannot be apprehended, then the justice may proceed and examine the witnesses on either side on oath, and after hearing the parties and the witnesses, he shall convict or acquit the party accused. If the forfeiture be not paid within twenty-four hours after conviction, such justice shall issue his warrant of distress; and if the party convey away his goods out of the jurisdiction of the convicting justice, so that the penalty cannot be levied, then the warrant shall be backed, and thereupon the penalty forfeited be levied. And if not redeemed in five days from the taking of the distress, the goods seised shall be appraised and sold, and the overplus, if any, returned after deducting the costs of the prosecution, distress, and sale; the convicting justice to ascertain the same, or the justice who backed the warrant, if either be alive; if not, then some other justice of the county, &c. where the conviction took place. And in default of sufficient distress, and proof of conviction and non-payment, such justice shall by warrant commit to the common gaol or house of correction of the city, &c. where the offender shall be found, there to remain for one calendar month; unless after such commitment payment be made before expiration of said calendar month.

§ 34. All such penalties and forfeitures to go to the informer.

Of changing corn.

R. v. *Wood*, 1 *Sess. Ca.* 217. The defendant being a miller was indicted for *changing* corn delivered to him to be ground, and giving bad corn instead of it. It was moved to quash it, because only a private cheat, and not of a public nature. But it was answered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable. And the court were unanimous not to quash it. See Vol. I. tit. Cheat.

Indictment does not lie against a miller for receiving good barley to grind at his mill, and delivering a mixture of oat and barley-meal

R. v. *Haynes*, 4 *M.* & *S.* 214. The indictment in substance charged the defendant, a miller, with receiving good barley to grind at his mill, and delivering a mixture of oat and barley meal, different from the produce of the barley, and which was musty and unwholesome; and the defendant having been found guilty, it was assigned for error amongst other things, that no indictable offence was charged against him. As to one of the grounds upon which it was contended that the offence charged was not indict-

31 G. 2. c. 29.

different from the produce of the barley, and which is musty and unwholesome.

able, namely, that the statement should have been, that the defendant delivered the barley "*to be eaten as for food*," and that it was "*not fit to be eaten by man*;" Lord *Ellenborough* C. J. said, that if the indictment had alleged that the defendant delivered the barley as an article for the food of man, it might possibly have been sustained; but that he could not say that its being musty and unwholesome necessarily, and *ex vi termini*, imported that it was for the food of man; and it was not stated that it was to be used for the sustentation of man, only that it was a mixture of oat and barley meal. As to the other point, that this was not an indictable offence, because it respected a matter transacted in the course of trade, and where no tokens were exhibited by which the party acquired any greater degree of credit; his lordship said, that if the case had been that this miller was owner of a soke mill, to which the inhabitants of the vicinage were bound to resort in order to get their corn ground, and that the miller, abusing the confidence of this his situation, had made it a colour for practising a fraud, this might have presented a different aspect: but as it then stood, it seemed to be no more than the case of a common tradesman, who was guilty of a fraud in a matter of trade or dealing, such as was adverted to in *R.* v. *Wheatley*, 2 *Burr.* 1125. and the other cases, as not being indictable.

Of taking corn away with intent to steal it.

Although every larceny implies a trespass, and a felonious *taking* of the thing stolen, yet it hath been resolved, that even those who have the possession of goods by the delivery of the party, as a miller who hath corn delivered to him to grind, may be guilty of felony by taking away any part thereof with an intent to steal it. 1 *Haw.* c. 33. §. 5.

Millers not to be buyers of corn.

Millers are not to be common buyers of any corn, to sell the same again, either in corn or meal; but ought only to serve for the grinding of corn that shall be brought to their mills. *Dalt.* c. 112. *p.* 259.

36 G. 3. c. 85. Balances and weights to be kept in mills.

By stat. 36 *G.* 3. *c.* 85. § 1. Every miller, or other person keeping a mill for grinding of corn, shall have in such mill a true and equal balance with proper weights, according to the standard of the exchequer: and any person or persons appointed by 35 *G.* 3. *c.* 102. (*a*) to examine weights and balances within his or their respective counties, ridings, liberties, and divisions, is and are hereby required to examine such balances and weights, and to proceed as is by that act directed; and every miller or other person as aforesaid, in whose mill shall be found no balance or weights, shall forfeit a sum not exceeding 20*s.* And every such miller or other person, in whose mill shall be found any weight or weights not being according to the standard in the exchequer, or any false or unequal balance or balances, and all persons obstructing, hindering, or resisting such persons † in viewing and examining the same, shall be liable to be proceeded against, and shall forfeit the like penalties as any person committing the like offences against the provisions of the said act of 35 *G.* 3. *c.* 102.

Provisions of 35 G. 3. c. 102. to extend to this act.

† *Sic.*

Millers to weigh corn, if required, before and after ground, on penalty of 40s.

§ 2. Every person who shall bring or cause to be brought any corn to any mill to be ground, may require the miller or other person acting for him, or keeping the mill, to weigh in his or her

(*a*) See this act, and stat. 5 *G.* 4. *c.* 74. § 21. Vol. V. tit. Weights and Measures.

presence such corn before it shall be ground, and after it shall be ground may require the miller or other person as aforesaid to weigh, in his or her presence, the produce of the corn so ground; and if any miller or other person as aforesaid shall refuse so to weigh the said corn, he shall be liable to forfeit and pay any sum not exceeding 40*s*. 36 G.3. c.85.

§ 3. Every miller or other person keeping a mill for grinding corn shall, after grinding any corn, deliver to the person who brought or caused such corn to be brought, if such person shall require the same, the whole produce of such corn in weight, allowing for the diminution in weight that shall have been caused by the waste in grinding, and by taking toll in cases where toll is hereinafter allowed to be taken; and if such corn shall be dressed into flour, then the whole produce in weight, allowing for the diminution in weight that shall have been caused by the waste in grinding and dressing, and by taking toll as aforesaid: and if such corn, on being weighed after grinding, or after grinding and dressing, shall appear to weigh less than such full weight, after allowing for the diminution aforesaid, as the case may be, such miller shall, for every bushel of corn so deficient in weight, forfeit and pay a sum not exceeding 1*s*., and also treble the value of such deficiency.

Millers to deliver the whole produce of corn when ground, if required, allowing for waste and toll, on penalty of 1s. per bushel for the deficiency, and treble the value.

§ 4. In cases where toll is hereinafter allowed to be taken, such quantity of corn as the miller shall be lawfully entitled to deduct by way of toll for grinding the same, shall be deducted before the said corn shall be put into the mill.

Toll to be deducted from corn before it be put into the mill.

§ 5. No miller or other person keeping a mill for grinding corn, shall demand or take any part of the corn brought to be ground, or of the produce of such corn when ground, by way of toll for payment, but in lieu thereof he shall be entitled to demand payment in lawful money of *G. B.*; and every miller or other person who shall demand or take any part of the corn brought to be ground, or of the produce of such corn when ground, by way of toll for payment, shall for every such offence be liable to forfeit any sum not exceeding 5*l*.: Provided always, that where any person who has brought or caused to be brought any corn to be ground, shall not have money to pay for grinding the same, it shall be lawful for the miller or other person, with the consent of the person bringing the same, to take such part of the produce of such corn as will be equal to the money price expressed in the table of prices hereinafter required. Provided also, that nothing herein shall extend to the mills called *Sokemills*, or such other ancient mills, where the right and obligation of the possessors thereof to grind corn for particular persons or within particular districts, and to take a fixed and certain toll for grinding, are established by ancient custom, and the law of the land; but such mills shall continue to take toll in the same quantity and manner as they had been accustomed to do.

From June 1, 1796, no corn, but money, to be taken for toll, on penalty of 5l., except where the party has no money.

Act not to extend to *Sokemills* where a right to take toll has been established by custom and law.

§ 6. And every miller or other person, who shall grind for hire or toll, shall cause to be put up in some conspicuous place in his mill, and renew when necessary, in fair and legible characters, a table of the prices in money, or of the amount of toll or multure, for which the several operations of his mill are to be performed respectively; and every miller, or other person as aforesaid, who shall omit to set up and keep fair and legible such a table, shall

A table of the prices to be put up.

36 G.3. c.85. be liable to forfeit and pay any sum not exceeding 20*s*. for every such offence.

Private mills. § 7. Provided, that nothing herein shall extend to any mill kept for the private use of the proprietor or occupier only.

Recovery and application of penalties. § 8. Every penalty and forfeiture imposed by this act shall and may be recoverable before any one or more justice or justices of the peace for the county, riding, division, or place, where the offence shall be committed, upon conviction, or confession of the party, or on the oath of one or more credible witness or witnesses; and such penalty and forfeiture shall be levied by warrant under the hand and seal, or hands and seals, of such justice or justices, by distress and sale of the goods and chattels of the person or persons so offending; and the penalty and forfeiture, when so levied, shall be paid one moiety to the informer, and the other moiety to the poor of the parish where the offence shall be committed, and the overplus (if any), after the costs of such conviction and distress and sale are deducted, shall be returned to the party or parties offending; and in case such distress cannot be found, and such penalty and forfeiture, and the said costs and charges, shall not be forthwith paid, it shall and may be lawful for such justice or justices, and he and they is and are hereby authorised and required, by warrant under his or their hand and seal, or hands and seals, to commit such offender or offenders to the common gaol or house of correction of the county or place where the offence shall be committed, for any time not exceeding one month, unless the said penalty and forfeiture, and costs and charges, shall respectively be sooner paid and satisfied: Provided always, that in case any person or persons shall find himself or themselves aggrieved by the judgement of any such justice or justices, then he or they shall or may, upon giving security to the amount of the value of such penalty and forfeiture, together with such costs as shall be awarded, in case such judgment shall be affirmed, appeal to the justices of the peace at the next general quarter sessions for the county, riding, division, or place as aforesaid, who are hereby empowered finally to hear and determine the same; and in case the judgment of such justice or justices shall be affirmed, it shall be lawful for such justices, at their quarter sessions as aforesaid, to award the person or persons to pay such costs, occasioned by such appeal, as to themselves shall seem meet, and no such judgement or conviction shall be removable by *certiorari* into any court whatsoever.

Appeal may be made to the quarter sessions.

Judgements not removable.

Limitation of informations. § 9. Any information for any offence against this act shall be laid within ten days after the offence has been committed, otherwise the same shall be of no effect.

§ 10. And the conviction may be in the following form:—

A.

Conviction.

County of ——— to wit. } *BE it remembered, that on the* —— *day of* ——, *in the year* ——, A. O. *was, upon the complaint of* A. I., *convicted before* —— *of the justices of the peace for* ———, *in pursuance of an act passed in the thirty-sixth year of the reign of his majesty king* George *the third, for* [or, as the case may be.] *Given under* —— *hand and seal, the day and year above written.*

Which conviction shall be certified to the next general quarter sessions, there to be filed among the records.

By stat. 9 *G.* 3. *c.* 29. § 2. Whereas no effectual provision hath heretofore been made for preventing the burning of mills, be it enacted, that if any person or persons shall (after the 1st *July* 1769) wilfully or maliciously burn or set fire to any wind-saw-mill, or other wind-mill, or any water-mill, or other mill; such person so offending, being lawfully convicted thereof, shall be adjudged guilty of felony without benefit of clergy. 9 G. 3. c. 29. Burning mills.

By § 4. No person shall be prosecuted by virtue of this act for any offence committed contrary to the same, unless such prosecution be commenced within eighteen months after the offence committed. Limitation.

By stat. 41 *G.* 3. (U. K.) *c.* 24. The damages occasioned by the demolishing or pulling down any such mill by persons riotously assembled may be sued for and recovered in the manner provided for by 1 *G.* 1. *stat.* 2. *c.* 5. respecting the demolishing churches and other buildings. (*a*) 41 G. 3. (U. K.) c. 24.

And by stat. 43 *G.* 3. *c.* 58. § 1. Any person who shall wilfully, maliciously, and unlawfully set fire to any mill in the possession of any other person, or of any body corporate, with intent to injure or defraud H. M. or any of his subjects, or any body corporate, such persons, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be guilty of felony without benefit of clergy. 43 G. 3. c. 58. Burning mills to defraud third persons.

See this statute (43 *G.* 3. *c.* 58.) more at length and the case of *William Farrington*, for setting fire to a cotton-mill, Vol. I., tit. Burning, § 2.

As to destroying mills built for the purposes of the *Bedford* Level, See Vol. I. tit. Bedford Level. Bedford Level.

Militia. See Military Law, § II. *ante.*

Mines, destroying. See Coal and Coal Mines.

Misadventure. See Homicide.

Misdemeanor.

THIS word, in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine or imprisonment, or both. *Barl.* 370.

This is the case with respect to acts of omission or commission which were punishable at common law; but many offences are by the statute law punishable as misdemeanors specifically.

(*a*) See this act, tit. Riot, &c. Vol. V. § IV.

A misdemeanor is, in truth, any crime less than felony: and the word is generally used in contradistinction to felony: and misdemeanors comprehend all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, public nuisances, &c. 4 *Blac. Com.* 5. (*Christian's Note,*) (2)

Soliciting another to steal.

To solicit a servant to steal his master's goods, is a misdemeanor, though it be not charged in the indictment that the servant stole the goods, nor that any other act was done except *the soliciting* and inciting. And such offence is indictable at the sessions, having a tendency to a breach of the peace. *Rex* v. *Higgins*, 2 *East*, 5. See also stat. 3 *G*. 4. *c*. 38. § 3. for the punishment of persons advising children or others to commit thefts. Vol. I. tit. Accessary.

Receiving stolen goods.

For the punishment of persons convicted of misdemeanor for having received stolen goods knowing them to be stolen, see stat. 3 *G*. 4. *c*. 114. Vol. III. tit. Judgment.

Time of trial.

As to the time of proceeding to trial in indictments, &c. for misdemeanors; see stat. 60 *G*.3. and 1 *G*.4. *c*. 4. Vol. V. tit. Traverse.

Misnomer. See **Indictment.**

Misprision of Felony. See **Felony.**

Misprision of Treason. See **Treason.**

Mittimus. See **Commitment.**

Month. See **Time.**

Murder. See **Homicide.**

Mute.

[12 G. 3. c. 20.]

HERETOFORE a person standing mute upon an arraignment of felony (that is, without speaking any thing at all, or without putting himself upon God and the country,) was liable to a strange aud cruel punishment; the judgment in such case was, that the man or woman should be remanded to the prison, and laid there in some low and dark room, where they should lie naked on the bare earth, without any litter, rushes, or other clothing, and without any garment about them, but something to cover their privy parts, and that they should lie upon their backs, their heads uncovered and their feet, and one arm to be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner to be done with their legs; and there should be laid upon their bodies iron and stone, so much as they might bear and more; and the next day following, to have three morsels of barley bread without any drink, and the second day to drink thrice of the water next to the house of the prison (except running water) without any bread; and this to be their diet until they were dead. So as, upon the

matter, they should die three manner of ways, by weight, by famine, and by cold. And the reason of this terrible judgment was, because they refused to stand to the common law of the land. 2 *Inst.* 178, 179.

And this (which was called *peine forte & dure*) some persons endured for the sake of their children or other kindred; because in such case they forfeited their goods only, and not their lands; for lands could not be forfeited but by attainder.

But now, by stat. 12 *G.* 3. *c.* 20. § 1. *If any person being arraigned on any indictment or appeal for felony, or on any indictment for piracy, shall upon such arraignment stand mute, or will not answer directly to the felony or piracy, he shall be convicted of the offence, and the Court shall thereupon award judgment and execution in the same manner as if he had been convicted by verdict or confession; and such judgment shall have all the same consequences as a conviction by verdict or confession.* 12 G. 3. c. 20.

By § 2. This act extends to H. M.'s colonies and plantations in *America.*

And the same law is, with respect to an arraignment for *treason* or *petit larceny;* for before this act, persons standing mute in either of these cases, were to have the like judgment as if they had confessed the indictment. 2 *Inst.* 177. 2 *Haw. c.* 30. § 9. 10.

Whether a prisoner stand mute, obstinately, or by the visitation of God, is a fact triable *instanter* by a jury to be returned for that purpose, and if found obstinate, the trial in chief may proceed. *Mercier's case, O. B. Dec.* 1777. 1 *Leach*, 183.

So if the jury return that the prisoner is deaf by the visitation of God, the trial may proceed, and on conviction the prisoner be sentenced to transportation. *Steele's case, O. B.* 1787. 1 *Leach*, 451. Deaf prisoner.

In *R.* v. *G. Halton, Apr.* 20. 1824, *Bristol Gaol Delivery, cor. Lord Gifford,* Recorder. 1 *Ry. & M.* 88. Indictment on stat. 43 *G.* 3. *c.* 58. for maliciously cutting. The prisoner when called on to plead on his arraignment said, that he was quite deaf, but could read print or large writing. An officer then read over the indictment close to him with a loud voice, but the prisoner did not appear to hear: and on his not answering, a jury was sworn to try whether he stood mute by the act of God or out of malice: the gaoler was then examined and said, that the prisoner had always appeared quite deaf during the several months he had been in his custody, and that his fellow-prisoners conversed with him by signs.—Lord *Gifford*, Recorder, in charging the jury, said, that he had adopted this proceeding after great deliberation, on the authority of *R.* v. *Jones*, 1 *Leach, C. C.* 451. and *R.* v. *Steele* (*supra*), which, in his opinion, governed the present case in principle, though it differed from it in several respects.—The jury found that the prisoner was mute by the act of God, and were then sworn to try the indictment. The evidence of each witness was taken down in a large hand, and shewn to the prisoner before the witness retired. The prisoner read it, and asked some questions about words in the writing which he could not make out; but did not cross-examine the witnesses.—Acquitted.

Naval Stores. See Cordage for Shipping, Vol. I.

Newspapers and Pamphlets.

[10. An. c. 19. — 16 G. 2. c. 26. — 29 G. 3. c. 50. — 34 G. 3. c. 72. — 37 G. 3. c. 90. — 38 G. 3. c. 78. — 55 G. 3. c. 185. — 60 G. 3. c. 9.]

55 G. 3. c. 185.

BY stat. 55 G. 3. *c.* 185. On every newspaper, or paper containing public news, intelligence, or occurrences, printed in *G. B.*, to be dispersed and made public; that is to say, for every sheet, half-sheet, or other piece of paper, whereof the same shall consist, a duty is imposed of 4*d.*

Discounts to be allowed on newspaper stamps.

§ 9. Enacts, that a discount, after the rate of 20*l.* *per centum* on the prompt payment of any sum of 10*l.* or upwards for the duties on newspapers granted by this act, shall be allowed to all proprietors of newspapers, who shall sell their papers to the public at a price not exceeding 7*d.* each, or at a price not exceeding 2½*d.* each, above the price at which their papers were sold, for the space of three calendar months or more, prior to the 22d day of *June* 1797; and that a discount, after the rate of 4*l.* *per centum* and no more, on the prompt payment of any sum of 10*l.* or upwards for the duties on newspapers granted by this act, shall be allowed to the proprietors of newspapers, who shall sell their papers to the public at any higher price than that above mentioned.

Newspapers to be stamped to distinguish discount.

§ 10. Enacts, that the commissioners of stamps shall provide two sets of stamps for denoting the duties hereby granted on newspapers, one of which shall express the allowance of discount of 20*l.* *per centum*, and the other not; the first mentioned set shall be used for stamping the paper of the persons to whom that discount shall be allowed; and the other set of stamps shall be used for stamping the paper of the persons to whom the discount of 4*l.* *per centum* shall be allowed: and

Price of newspapers to be printed thereon.

Penalty for omission, and for selling at a higher price, &c.

if any person or persons shall print, or cause or procure to be printed, any newspaper, or paper containing public news, intelligence, or occurrences, without printing thereon the full price at which the same is to be sold, or shall sell or expose to sale any such paper or newspaper, at any greater price than shall be printed thereon, or shall print, or cause or procure to be printed, on any such paper or newspaper, which shall be stamped with the stamp expressing the larger discount, any price exceeding that, in respect of which the larger discount is hereby directed to be allowed, or shall sell or expose to sale any such paper or newspaper, so stamped as last mentioned, at or for any price exceeding that, in respect of which the larger discount is hereby directed to be allowed, the person or persons so offending shall, for every such paper or newspaper so printed or sold, or exposed to sale as aforesaid, contrary to the intent and meaning of this act, forfeit the sum of 20*l.*

Limitation of actions.

By stat. 37 *G.* 3. *c.* 90. § 38. (the provisions of which appear to be extended to stat. 55 *G.* 3. *c.* 185. by § 4.) All actions to be brought within six calendar months, and if the defendant shall recover he shall have treble costs.

By stat. 55 *G.* 3. *c.* 185. On pamphlets, or books, or papers commonly so called, printed and published in *G. B.*, containing one whole sheet, and not exceeding eight sheets, in octavo, or any lesser page, or not exceeding twelve sheets in quarto, or twenty sheets in folio, for every sheet of any kind of paper contained in one copy thereof, a duty is imposed of 3*s.* 55 G.3. c.185.

And all parts or numbers of any book, or literary work, published in parts or numbers, exceeding one whole sheet, but not exceeding eight sheets in octavo, or any lesser page, or not exceeding twelve sheets in quarto, or twenty sheets in folio, shall be deemed pamphlets.

Exemptions from the Duties on Pamphlets, Newspapers, and Advertisements.

Acts of parliament, proclamations, orders of council, forms of prayer and thanksgiving, and acts of state ordered to be printed by H. M., his heirs, or successors.

Printed votes, or other matters, by order of either house of parliament.

Books commonly used in the schools of *G. B.*

Books containing only matters of devotion or piety.

Any paper containing a single advertisement printed and dispersed separately.

Daily accounts or bills of goods imported and exported, and the weekly bills of mortality, provided such bills or accounts do not contain any other matter than what hath been usually comprised therein.

By a general clause of reference contained in the act (§ 4.) the duties above-mentioned are to be collected under the provisions and regulations of stat. 10 *Ann.*, *c.* 19., which directs § 111., that one printed copy of every such pamphlet as above described, which shall be printed or published in *London* or *Westminster*, or within the weekly bills of mortality, shall be brought to the head office of stamps, within six days after the printing thereof, to be there registered and the duty paid thereon; and that one copy of every such pamphlet, printed and published in any other part of *G. B.*, shall, within fourteen days after the printing thereof, be brought to some head collector of stamp duties, who is to enter the same and receive the duty: and in default thereof, 10 An. c. 19.

By § 112. The printer and publisher of such pamphlet, and every person concerned in the printing or publishing thereof, shall forfeit the sum of 20*l.* with full costs of suit.

And by § 113. No person shall sell or expose to sale, any such pamphlet, without the true name or names and place or places of abode of some known person or persons, by or for whom the same was really and truly printed or published, being written or printed thereon, under a penalty of 20*l.* with full costs of suit.

By stat 60 *G.* 3. *c.* 9. intituled "*An act to subject certain publications to the duties of stamps upon newspapers, and to make other regulations for restraining the abuses arising from the publication of blasphemous and seditious libels;*" 60 G.3. c.9.

§ 1. After reciting that whereas pamphlets and printed papers containing observations upon public events and occurrences, tending to excite hatred and contempt of the government and

60 G.3. c.9.

Subjecting certain printed pamphlets and papers to the stamp duties upon newspapers, and to the regulations of recited acts.

constitution of these realms as by law established, and also vilifying our holy religion, have lately been published in great numbers, and at very small prices; and it is expedient that the same should be restrained: it is enacted, that from and after ten days after the passing of this act, [viz. 30th *December*, 1819,] all pamphlets and papers containing any public news, intelligence or occurrences, or any remarks or observations thereon, or upon any matter in church or state, printed in any part of the U. K. for sale, and published periodically, or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such pamphlets or papers, parts or numbers, where any of the said pamphlets or papers, parts or numbers respectively, shall not exceed two sheets, or shall be published for sale for a less sum than sixpence, exclusive of the duty by this act imposed thereon, shall be deemed and taken to be newspapers within the true intent and meaning of stats. 38 *G*. 3. *c*. 78., 55 *G*. 3. *c*. 80., 55 *G*. 3. *c*. 185., 56 *G*. 3. *c*. 56., "and all other acts of parliament in force relating to newspapers; and be subject to such and the same duties of stamps, with such and the same allowances and discounts, as newspapers printed in *G. B.* and *Ireland* respectively, now are subject unto under and by virtue of the said recited acts of parliament, and shall be printed, published, and distributed under and subject to all such and the like rules, regulations, restrictions, provisions, penalties, and forfeitures, as are contained in the said recited acts, or either of them, or in any other act or acts of parliament now in force in *G. B.* or *Ireland* respectively, relating to newspapers printed, published, dispersed or made public in the U. K.; and the said recited acts of parliament, and all other acts of parliament now in force in *G. B.* or *Ireland* respectively, relating to the printing, publishing, dispersing, or making public in *G. B.* or *Ireland* respectively, any newspapers, or containing any regulations relating thereto, and all the clauses, provisions, regulations, restrictions, penalties and forfeitures therein respectively contained, and in force at the passing of this act, shall (except where the same may be altered by this act) be applied and put in force in relation to all such pamphlets and printed papers aforesaid, as fully and effectually as if all such clauses, provisions, regulations, restrictions, penalties, and forfeitures were respectively, severally, and separately re-enacted in and made part of this act; and the said recited acts, and all other such acts of parliament as aforesaid, and this act shall, as to all the purposes of carrying this act into execution, be construed as one act."

No quantity of paper less than 21 inches in length, and 17 in breadth, to be deemed a sheet.

§ 2. Enacts, "that no quantity of paper less than a quantity equal to twenty-one inches in length and seventeen inches in breadth, in whatever way or form the same may be made, or may be divided into leaves, or in whatever way the same may be printed, shall be deemed or taken to be a sheet of paper within the meaning and for the purposes of this act."

No cover or blank leaf to be deemed part of a pamphlet.

§ 3. Enacts, "that no cover or blank leaf, or any other leaf upon which any advertisement or other notice shall be printed, shall, for the purposes of this act, be deemed or taken to be a part of any such pamphlet, paper, part, or number aforesaid."

§ 4. Enacts, "that all pamphlets and papers containing any public news, intelligence, or occurrences, or any such remarks or observations as aforesaid, printed for sale, and published periodically, or in parts or numbers, at intervals exceeding twenty-six days between any two such pamphlets or papers, parts or numbers, and which said pamphlets, papers, parts, or numbers respectively, shall not exceed two sheets, or which shall be published for sale at a less price than sixpence, shall be first published on the first day of every calendar month, or within two days before or after that day, and at no other time; and that if any person or persons shall first publish or cause to be published any such pamphlet, paper, part, or number aforesaid, on any other day or time, he or they shall forfeit for every such offence the sum of 20*l*."

60 G. 3. c. 9.

Publications at intervals exceeding 26 days, to be published on the first day of every calendar month, or within two days before or after. Penalty 20l.

§ 5. Enacts, "that upon every pamphlet or paper containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or upon any matter in church or state, printed in any part of the U. K. for sale, and published periodically, or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such pamphlets or papers, parts or numbers, and upon every part or number thereof, shall be printed the full price at which every such pamphlet, paper, part or number shall be published for sale, and also the day on which the same is first published; and if any person shall publish any such pamphlet, paper, part or number, without the said price and day being printed thereon, or if any person shall at any time within two months after the day of publication printed thereon as aforesaid, sell or expose to sale any such pamphlet, paper, part or number, or any portion or part of such pamphlet, paper, part or number, upon which the price so printed as aforesaid shall be sixpence, or above that sum, for a less price than the sum of sixpence, every such person shall for every such offence forfeit and pay the sum of 20*l*."

The price and day of publication to be printed on periodical publications, and penalty for omitting the same, 20l.

§ 6. Provides and enacts, "that nothing in this act contained shall extend or be construed to extend to subject any person publishing any pamphlet or paper to any penalty for any allowance in price made by the person for whom and on whose behalf, and for whose profit, benefit, or advantage, the same shall have been first published, to any bookseller or distributor, or other person to whom the same shall be sold for the purpose of retailing the same."

Not to extend to the allowance made to distributors who buy to retail.

§ 7. Enacts, "that all pamphlets and papers which are by this act declared to be subject to the stamp duties upon newspapers, shall be freed and discharged from all the stamp duties and regulations contained in any act of parliament relating to pamphlets."

Pamphlets liable to stamp duties freed from all regulations relating to pamphlets.

§ 8. Enacts, "that no person, from thirty days after the passing of this act, shall print or publish for sale, any newspaper or any pamphlet or other paper containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or upon any matter in church or state, which shall not exceed two sheets, or which shall be published for sale at a less price than sixpence, until he or she shall have entered into a recognisance before a baron of the exchequer, in *England*, *Scotland*, or *Ireland* respectively, as the case may be, if such newspaper or pamphlet, or other paper aforesaid, shall be printed in *London*

No persons to print or publish newspapers, &c. or pamphlets, without entering into recognisance, or giving bond for securing fines upon conviction for libels.

60 G. 3. c. 9. or *Westminster*, or in *Edinburgh* or *Dublin*, or shall have executed in the presence of, and delivered to some justice of the peace for the county, city, or place where such newspaper, pamphlet, or other paper shall be printed, if printed elsewhere, a bond to H. M., his heirs, and successors, together with two or three sufficient sureties, to the satisfaction of the baron of the exchequer taking such recognisance, or of the justice of the peace taking such bond, every person printing or publishing any such newspaper or pamphlet or paper aforesaid, in the sum of three hundred pounds, if such newspaper, pamphlet, or paper shall be printed in *London* or within twenty miles thereof, and in the sum of two hundred pounds, if such newspaper, pamphlet, or paper shall be printed elsewhere in the U. K., and his or her sureties in a like sum in the whole, conditioned that such printer or publisher shall pay to H. M., his heirs and successors, every such fine or penalty as may at any time be imposed upon or adjudged against him or her, by reason of any conviction for printing or publishing any blasphemous or seditious libel, at any time after the entering into such recognisance or executing such bond; and that every person who shall print or first publish any such newspaper, pamphlet, or other paper, without having entered into such recognisance, or executed and delivered such bond with such sureties as aforesaid, shall, for every such offence, forfeit 20*l*."

Penalty, 20l.

If sureties pay any part of the money for which they are bound, or become bankrupt, new recognisance or bond with sureties must be given.

§ 9. Provides and enacts, "that in every case in which any surety or sureties in any such recognisance or bond shall have been required to pay, and shall have paid the whole or any part of the sum for which he, she, or they shall have become surety; or in case any such surety or sureties shall become bankrupt, or be discharged under any insolvent act; then and in every such case the person for whom such surety or sureties shall have been bound, shall not print or publish any newspaper or pamphlet, or other paper aforesaid, until he or she shall, upon being required so to do by the commissioners of stamps for *G. B.* and *Ireland* respectively, have entered into a new recognisance, or executed a new bond, with sufficient sureties, in the manner and to the amount aforesaid; and in case he or she shall print or publish any such newspaper or pamphlet, or other paper aforesaid, without having entered into such new recognisance, or executed such new bond as aforesaid, having being required so to do as aforesaid, he or she shall forfeit for every such offence the sum of 20*l*.

Penalty, 20l.

Sureties may withdraw from recognisance, upon giving notice.

§ 10. Provides and enacts, "that if any surety or sureties shall be desirous of withdrawing from such recognisance or bond, it shall and may be lawful to and for him or them so to do, upon giving twenty days' previous notice in writing to the said commissioners of stamps respectively, or to the distributor of stamps of and for the district where the printer or publisher for whom he or they is or are surety or sureties shall reside, and also to such printer or publisher; and that in any such case, every such surety or sureties, from and after the expiration of such notice, shall not be liable upon the said bond or recognisance, other than and except for any penalty or penalties before that time imposed or incurred, and for which he or they would otherwise have been liable under the said recognisance or bond; and that then and in every such case, the person for whom such surety or sureties shall have been

New recognisance to be entered into.

bound, shall not print or publish any newspaper or pamphlet, or other paper aforesaid, until he or she shall have entered into a new recognisance, or executed a new bond, with sufficient sureties, in the manner and to the amount aforesaid; and in case he or she shall print or publish any such newspaper or pamphlet, or other paper aforesaid, without having entered into such new recognisance or bond as aforesaid, he or she shall for every such offence forfeit the sum of 20*l*. 60 G. 3. c. 9. Penalty 20l.

§ 11. Provides and enacts, that no such bond as aforesaid shall be subject or liable to any stamp duty. Bonds not to be subject to stamp duty.

§ 12. Enacts, that lists of all the recognisances which shall have been entered into in the respective courts of exchequer in *England*, *Scotland*, or *Ireland*, shall, four times in each year, be transmitted to the commissioners managing the stamp duties in *G. B.* and *Ireland* respectively, as the case may be, by the respective officers recording such recognisances in such respective courts; and all bonds executed under the provisions of this act, shall, within ten days at the furthest after the execution thereof, be transmitted to the said commissioners respectively, by the justices of the peace to whom the same shall have been respectively delivered. Lists of recognisances and bonds taken, to be transmitted to commissioners of stamps in England, Scotland, and Ireland, respectively.

§ 13. "And whereas the printer or publisher of any newspaper, and of any pamphlet and paper hereby enacted to be deemed and taken to be a newspaper, will, after the passing of this act, be bound, under and by virtue of the provisions of stats. 38 *G*.3. *c*.78. and 56 *G*.3. *c*.56. respectively, to deliver to the commissioners of stamps in *G. B.* and *Ireland* respectively, or some distributor of stamps or other officer, on the day on which the same is published, or within a certain time afterwards, one of the newspapers, pamphlets, or papers so published, signed as in the said acts is respectively directed: and whereas it is expedient that the same or similar provisions and regulations should extend and be applied to all pamphlets and papers, whether published periodically or not, and which shall contain any public news, intelligence, or occurrence, or any remarks or observations thereon, or upon any matter in church or state, and which shall not exceed two sheets as aforesaid, or which shall be published for sale at a less price than sixpence;" it is therefore enacted, "that from and after ten days after the passing of this act, the printer or publisher of any pamphlet or other paper for sale, containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or on any matter in church or state, shall, upon every day upon which the same shall be published, or within six days after, deliver to the commissioners of stamps for *G. B.* and *Ireland* respectively, at their head offices, or to some distributor or officer to be appointed by them to receive the same, and whom they are hereby required to appoint for that purpose, one of the pamphlets or papers so published upon each such day signed by the printer or publisher thereof, in his hand-writing with his name and place of abode; and the same shall be carefully kept by the said commissioners, or such distributor or officer, as aforesaid, in such manner as the said commissioners shall direct; and such printer or publisher shall be entitled to demand and receive from the commissioners, or such distributor or officer, the amount of the retail price of such pamphlet or paper so deli- Extending provisions of stats. 38 G. 3. c.78. 56 G. 3. c. 56. relating to the delivery of newspapers, &c. to the commissioners of stamps, to this act:

60 G.3. c.9.

Penalty for not delivering pamphlet, &c. 100l.

vered; and in every case in which the printer and publisher of such pamphlet or paper shall neglect to deliver one such pamphlet or paper in the manner hereinbefore directed, such printer and publisher shall, for every such neglect respectively, forfeit the sum of 100*l*."

Commissioners refusing to take any pamphlet or paper, to give, if required, certificate of such refusal.

§ 14. Provides, and enacts, "that in case the said commissioners, or such distributor or officer aforesaid, shall refuse to receive or pay for any copy of such pamphlet or paper offered to be delivered to them or him as aforesaid, for or on account of the same not being within the true intent and meaning of this act, such commissioners, distributor, or officer shall, if required so to do, give and deliver to such printer or publisher a certificate in writing that a copy of such pamphlet or paper had been by him duly offered to be delivered; and such printer or publisher shall thereupon be freed and discharged from any penalty for not having delivered such copy as aforesaid."

Penalty on persons selling papers not stamped, 20l.

§ 15. Enacts, "that if any person shall sell or expose to sale any pamphlet or other paper not being duly stamped, if required to be stamped, such person shall, for every such offence, forfeit the sum of 20*l*.

Recognisance, in case of libel, to be of good behaviour, as well as to appear to answer.

§ 16. Declares and enacts, "that it shall be lawful for any of H. M.'s courts of record at *Westminster* or *Dublin*, or of great session in *Wales*, or any judge thereof respectively, or for any court of quarter or general sessions of the peace, or for any justice of the peace before whom any person charged with having printed or published any blasphemous, seditious, or malicious libel, shall be brought for the purpose of giving bail upon such charge, to make it a part of the condition of the recognisance to be entered into by such person and his or her bail, that the person so charged shall be of good behaviour during the continuance of such recognisance."

Recovery of penalties.

§ 17. Enacts, "that all fines, penalties, and forfeitures by this act imposed, shall be recovered by action of debt, bill, plaint, or information in any of H. M.'s courts of record at *Westminster* or *Dublin*, or the courts of great session in the principality of *Wales*, or the courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, or in the court of session or court of exchequer in *Scotland* (as the case shall require), wherein no essoin, privilege, protection, wager of law, or more than one imparlance shall be allowed; or before any two justices of the peace of the county, riding, stewartry, city, or place where the offence shall be committed: provided always, that no larger amount in the whole than 100*l*. shall be recoverable or recovered before any justices of the peace, for any such penalties incurred in any one day."

Two or more justices to determine offences;

§ 18. Enacts, "that it shall be lawful for any two or more justices of the peace, in all cases in which they are authorised to hear and determine any offence or offences which shall be committed against this act, or any other act or acts of parliament which are by this act required to be construed therewith as part thereof, upon information exhibited or complaint made in that behalf, within three months after any such offence committed, to summon the party accused, and also the witnesses on either side; and upon the appearance, or contempt of the party accused in not appearing, to proceed to the examination of the witness or witnesses upon oath (which oath they are hereby empowered to

administer), and to give judgment for the penalty or penalties incurred, and in case the party shall not immediately pay the said penalty or penalties, to commit the offender to prison, there to remain for any time not exceeding six months, unless such pecuniary penalty or penalties shall be sooner paid and satisfied; and if any party shall find himself or herself aggrieved by the judgment of any such justices, then he, she, or they may, upon giving security to the amount or value of the penalty or penalties adjudged, together with such costs as may be awarded in case such judgment shall be affirmed, appeal to the justices of the peace at the next quarter or general sessions of the peace for the county, riding, division, or place wherein such offence shall be committed, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same; and in case the judgment shall be affirmed, it shall be lawful for such justices to order the person or persons making such appeal, to pay such costs occasioned by such appeal, as to them shall seem meet: provided nevertheless, that it shall and may be lawful for the said respective justices, where they shall see cause, to mitigate or lessen any such penalty or penalties, in such manner as they in their discretion shall think fit; the reasonable costs and charges of the officers or informers being always allowed over and above such mitigation; and so as such mitigation does not reduce the penalty to less than one-fourth part thereof, over and above the said costs and charges." 60 G.3. c.9. May mitigate penalties.

§ 19. Enacts, "that if any person shall be summoned as a witness to give evidence before such justices of the peace, touching any such offence, either on the part of the prosecutor or of the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his or her neglect or refusal, to be allowed of by the justices before whom the prosecution shall be depending, or appearing shall refuse to give evidence, then every such person shall forfeit for every such offence any sum not exceeding twenty pounds, to be levied and paid in such manner and by such means as is in this act directed as to other penalties." Penalty on persons summoned as witnesses not appearing, &c.

§ 20. Enacts, "that the justices before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out in the manner and form following, or in any other form of words to the like effect, *mutatis mutandis*; that is to say, Convictions to be made out in the following form.

County of ——— to wit. } *Be it remembered, that on* ———, *at* ———, A. B. *of* ———, *was duly convicted before us,* ——— *of his majesty's justices of the peace for* ———, *in pursuance of an act passed in the sixtieth year of the reign of his late majesty* G. III., *intituled* An act [title of this act]; *for that the said* A. B. *on the* ——— *day of* ——— *now last past, did* [here state the offence as the case may happen to be] *contrary to the form of the statute in that case made and provided; for which offence we do adjudge that the said* A. B. *hath forfeited the sum of* ———; *and* [if the ——— justices mitigate the penalty] *which sum of* ———. *we do hereby mitigate to the sum of* ———. *Given under our hands and seals, this* ——— *day of* ———.

60 G. 3. c. 9.

Order or conviction of justices not to be removed into any court, or the execution superseded.

§ 21. Enacts, "that no order or conviction made in pursuance of this act by any justices of the peace shall be removed by *certiorari*, advocation, or suspension into any court whatever; and that no writ of *certiorari*, advocation, or suspension shall supersede execution or other proceedings upon any such order or conviction, but that execution and other proceedings shall be had thereupon, any such writ or writs or allowance thereof notwithstanding."

No actions for penalties shall be commenced but in the name of the attorney-general in England and Ireland, and advocate for Scotland, or some officer of the stamp duties.

§ 22. Enacts, "that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of H. M.'s courts, or before any justice or justices of the peace, against any person or persons, for the recovery of any fine, penalty, or forfeiture made or incurred by virtue of this act, unless the same be commenced, prosecuted, entered, or filed in the name of H. M.'s attorney-general in that part of *G. B.* called *England*, or in the name of H. M.'s attorney-general in *Ireland*, or H. M.'s advocate for *Scotland* (as the case may be respectively), or in the name of the solicitor or some other officer of H. M.'s stamp duties in that part of *G. B.* called *England*, or in *Scotland* or *Ireland* respectively: and if any action, bill, plaint, or information shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had, are hereby declared, and the same shall be null and void to all intents and purposes."

Duties to be under the management of the commissioners of stamps.

§ 23. "Enacts, that for the better and more effectually levying and collecting the said duties the same shall be under the government, care and management of the commissioners for the time being appointed in *G. B.* and *Ireland* respectively, to manage the duties on stamped vellum, parchment, and paper; who, or the major part of them, in *G. B.* and *Ireland* respectively, are hereby required and empowered to do all other things necessary to be done for putting this act into execution, with relation to the said duties hereby granted, in the like and in as full and ample a manner as they or the major part of them were authorised to put in execution any law or laws concerning stamped vellum, parchment, and paper."

Duties and discounts to be paid and allowed as former duties and discounts; and provisions of former acts to extend to this act.

§ 24. Enacts, "that the said duties shall be and are hereby made payable to H. M., his heirs and successors; and the said duties, and the several allowances, discounts, and sums of money, for or in respect of the same, shall and may be respectively raised, levied, collected, answered, paid, recovered, adjudged, accounted for, and applied and appropriated, mitigated and allowed, in such and the like manner, and in or by any or either of the general or special ways, means, or methods, by which the duties upon newspapers, and discounts and allowances in respect thereof, under the management of the said commissioners of stamped vellum, parchment, or paper, are or may be raised, levied, collected, answered, paid, recovered, adjudged, mitigated, and allowed; and the several persons, and also all such pamphlets and papers, of what nature or kind soever, by this act made liable to the payment of duty, or entitled to any discount or allowance, shall be and the same are hereby made subject and liable to all and every

the conditions, regulations, rules, and restrictions, to which such persons and newspapers are generally or specially subject and liable by any act or acts of parliament in force before the passing of this act; and all and every pain, penalty, fine or forfeiture for any offence whatever committed against or in breach of any act or acts of parliament now in force for securing the duties under the management of the said commissioners of stamped vellum, parchment, and paper, upon newspapers, or for the regulation or improvement of the said duties, and the several clauses, powers, provisions, directions, matters, and things therein contained, shall (except as the same or any of them are by this act altered or repealed) and are hereby directed and declared to extend to, and shall be respectively applied, practised, and put in execution for and in respect of the several duties charged, imposed, and allowed, in as full and ample a manner, to all intents and purposes whatsoever, as if all and every the said clauses, provisions, powers, restrictions, directions, fines, pains, penalties, or forfeitures, matters and things, were particularly repeated and re-enacted in the body of this act." 60 G.3. c.9.

§ 25. Enacts, "that the monies arising from the duties hereby granted shall be paid into the receipt of the exchequer at *Westminster* and *Dublin* respectively, and shall be carried to and made part of the consolidated fund of the U. K. of *G. B.* and *Ireland.*" Application of duties.

§ 26. Provides and enacts, "that nothing in this act shall extend to acts of parliament, proclamations, orders of council, forms of prayer and thanksgiving, and acts of state, ordered to be printed by H. M., his heirs or successors, or his or their sufficient and authorised officer: or to any printed votes or other matters by order of either house of parliament; or to books commonly used in the schools of *G. B.* or *Ireland*, or books or papers containing only matters of devotion, piety, or charity; or daily accounts; or bills of goods imported and exported; or warrants or certificates for the delivery of goods; and the weekly bills of mortality; or to papers containing any lists of prices current, or of the state of the markets; or any account of the arrival, sailing, or other circumstances relating to merchant ships or vessels; or of any other matter wholly of a commercial nature; provided such bills, lists, or accounts, do not contain any other matter than what hath been usually comprised therein; or to the printers or publishers of the foregoing matters, or any or either of them." Exceptions.

§ 27. Provides and enacts, "that nothing in this act contained shall extend or be construed to extend to charge with stamp duties any work reprinted and republished in parts or numbers, whether such work shall be wholly reprinted, or shall be republished in an abridged form; provided that the work so reprinted and republished shall have been first printed and published two years at the least previous to such reprinting and republication; and provided the said work was not first published in parts or numbers." Reprinted works republished in numbers not chargeable with stamp duty, &c.

And by stat. 29 *G.* 3. *c.*50. § 7, 8. Instead of making allowances on the cancelling of newspapers remaining unsold, as now used, there shall be an abatement made to every person who shall pay at one time for newspaper stamps 10*l.* or upwards, after the rate of 4*l.* in the 100*l.* 29 G. 3. c.50.

29 G. 3. c. 50.

Letting out newspapers for hire.

§ 9. No hawker of newspapers, or other person, shall let out any newspaper for hire to any person, or to different persons, or from house to house, on pain of forfeiting 5*l.*, to be recovered and applied as other penalties relating to the stamp duties.

10 An. c. 19.

Powers of the justices.

By stat. 10 *Ann.* *c.* 19. § 120. Two justices may hear and determine offences against this act in relation to pamphlets or newspapers, on complaint made within three months; and on conviction either on view or information, may issue warrants for levying the penalties on the goods of the offender, and cause sale to be made, if not redeemed in six days: and in default of goods, may commit to prison till payment of the same: the party may appeal to the next sessions, who shall finally determine the same; and in case of conviction, issue warrants as aforesaid. The said justices may mitigate the penalty, so as they do not reduce it lower than one-fourth part, over and above the costs.

16 G. 2. c. 26.

Selling pamphlets or newspapers unstamped.

By stat. 16 *G.* 2. *c.* 26. § 5. If any person shall sell, hawk, carry about, utter, or expose to sale any newspaper, or any book, pamphlet, or paper, deemed to be a newspaper within the stamp acts, unstamped, any justice of the peace may commit him (being convicted before him by confession, or oath of one witness) to the house of correction for any time not exceeding three months; and any person may apprehend and carry him before such justice; and on producing a certificate of such conviction, under the hand of such justice, shall have a reward of 20*s.*, to be paid by the receiver-general of the stamp duties.

38 G. 3. c. 78.

And by stat. 38 *G.* 3. *c.* 78. § 18. for preventing the mischiefs arising from printing and publishing newspapers, and papers of a like nature, by persons unknown, and for making regulations in other respects, the same, so far as they relate to the office of a justice of the peace, are as follow:—

Printing or having newspapers unstamped.

§ 19. If any person shall knowingly and wilfully print and publish, or cause the same to be done, or take or receive into, or keep in his custody, any newspaper or other such paper, not on paper duly stamped, he shall forfeit for every such paper 20*l.* over and above all other penalties. See tit. Printers.

44 G. 3. c. 98.

Size of newspapers.

And by stat. 44 *G.* 3. *c.* 98. § 22. No newspaper shall be printed on a paper exceeding thirty-two inches in length and twenty-two inches in breadth.

38 G. 3. c. 78.

By stat. 38 *G.* 3. *c.* 78. § 22. It is enacted, that upon oath made that any person hath in his possession any newspaper or other paper (in this act aforesaid) intended to be sent or carried out of this kingdom, during the continuance of the war, into any country not in amity with H. M., he may summon such person and examine him for the better discovery of any other person intending to send or carry, or to cause, &c., or who have done or caused to be done any act towards the same; and if such person shall not submit to be examined, he shall forfeit 50*l.*, to be levied under the provisions of this act, in cases of fine not exceeding 20*l.*; and if the same cannot be levied, such person shall be committed for three months, as is hereinafter provided in cases where fines do not exceed 20*l.*: forfeiture of papers to H. M.

Printing or publishing seditious matter under colour of its having been

§ 24. If any person shall print or publish, or cause to be printed or published in any newspaper or other paper of a like nature, any matter or thing tending to excite hatred and contempt of H. M., or of the constitution and government, as having been previously

printed or published in some foreign paper or print, which hath not been so; such person shall, being convicted thereof, be committed to prison for not exceeding twelve nor less than six months, and be liable to such other punishment as may by law be inflicted in cases of high misdemeanors; and it shall be incumbent on the person against whom the proceeding shall be, to prove that the same had been previously printed and published in some foreign paper or print; and if he shall fail so to do, the same shall be deemed and taken not to have been so previously printed and published.

38 G.3. c.78.

printed in a foreign paper.

§ 29, 30. And all fines, penalties, and forfeitures by this act imposed, exceeding 20*l.* (except herein otherwise directed,) shall be recovered in the courts at *Westminster*. But where such penalties shall not exceed 20*l.* they may be recovered before one justice, on proof on oath of the offence, and may be levied by distress and sale of the offender's goods, together with the charges of such distress and sale; and for want of sufficient distress, such justice may commit such offender to gaol for any time not exceeding three months, unless otherwise directed; to be applied, half to the king, and half to the person who shall inform and sue. And no order or conviction shall be removeable by *certiorari* into any court whatsoever.

Recovery and application of penalties.

By stat. 55 *G.* 3. *c.*185. § 6. If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any plate, stamp, or die, or any part of any plate, stamp, or die, which shall have been provided, made, or used, in pursuance of this or any former act, for expressing and denoting any of the duties granted by this or any former act, on almanacks, newspapers, and licences to keep stage coaches; or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression or any part of the impression of any such plate, stamp, or die, upon any paper whatsoever, or shall stamp or mark, or cause or procure to be stamped or marked, any paper whatsoever, with any such forged or counterfeited plate, stamp, or die as aforesaid, with intent to defraud H. M., his heirs or successors, of any of the duties hereby granted on almanacks, newspapers, and licences to keep stage coaches, or any part thereof; or if any person shall utter, or sell, or expose to sale, any paper having thereupon the impression of any such forged or counterfeited plate, stamp, or die, or part of any plate, stamp, or die, or any such forged, counterfeited, or resembled impression, or part of impression as aforesaid, knowing the same respectively to be forged, counterfeited, or resembled; or if any person shall privately and secretly use any plate, stamp, or die, which shall have been so provided, made, or used, as aforesaid, with intent to defraud H. M., his heirs or successors; then every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person or persons in committing any such offence as aforesaid, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as a felon without benefit of clergy.

55 G. 3. *c.* 185. Forgery of stamps, &c. felony without clergy.

For stamp regulations, see tit. Stamps, Vol. V.

Advertisement contained in the *London Gazette*, or in any other newspaper, or paper containing public news, intelligence, or oc-

Duty on advertisements by 55 G.3. c.185

currences, printed and published in *G. B.,;* that is to say, for every such advertisement 3*s*. 6*d*.

Advertisement contained in or published with any periodical pamphlet whatsoever, printed and published in *G. B.*, or in or with any part or number of any book or literary work published in parts or numbers, for every such advertisement 3*s*. 6*d*.

Exemptions from these duties, *vide ante*, p.561.

Proof of publication of newspapers, see stat. 38 *G*. 3. *c*.78. tit. Printers.

Night Walkers. See Eves Droppers.
Noblemen. See Peers.
Non-compos. See Lunatics.
Non-conformists. See Dissenters.

Northern Borders.

[43 Eliz. c. 13.—13 & 14 C. 2. c. 22.—18 C. 2. c. 3.—29 & 30 C. 2. c. 2.—1 G. 4. c. 116.]

43 El. c. 13. Persons exacting Blackmail.

BY stat. 43 *El. c*. 13. § 1. 2. Forasmuch as many persons dwelling in *Cumberland, Northumberland, Westmorland, and Duresme*, have been taken by force and kept until ransomed; and whereas by reasons of incursions, burnings, and robberies, several inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly called by the name of *Blackmail*, to divers men of name, friended and allied with divers in those parts, who are known to be great robbers and spoil-takers in the said counties, to the end thereby to be by them freed, protected and kept in safety; by reason whereof many are impoverished, and rapine much increased; it is therefore enacted that whosoever shall, without good authority, take or detain any such persons against their wills to ransom them, or make a prey or spoil of their persons or goods upon deadly feud, or otherwise; or shall be aiding therein; or whosoever shall take, receive, or carry away, any money, corn, cattle, or other consideration commonly called *Blackmail*, for such protection; or shall burn any stack of corn; he shall, on conviction at the assizes or sessions, be guilty of felony without benefit of clergy. *See 2 East's P. C.* 650.

Forasmuch as, &c.] At the time when this act was made, and for some time after, the peace of the borders was maintained by commissioners appointed by the two crowns respectively, who agreed upon certain articles to be observed by both sides; appointed guards and watches at certain fords and other places; kept courts; redressed grievances; punished offenders; and had power of life and death, by way of legal trial in the manner of oyer and terminer. And this act was not made in abolition of such power, but in aid thereof, and for the punishment of certain offenders unto whom the commission of the lords wardens of the marches did not extend; which offenders, although not employed

in the protection of the country by virtue of the institution of the wardenship of the marches, yet demanded contribution of the inhabitants under pretence of preserving them from rapine and depredation by reason of the friendship and alliance which they had with the spoil-takers and robbers in those parts.

Blackmail.] *Maile*, in *French*, is a small piece of money; and in the 9 *H.5.* silver half-pence here were termed *mailes*. In a large acceptation, the word *maile* signifies a rent in general, paid either in money, corn, cattle, or other goods, as *geese maile, cow maile*, and the like; and in *Scotland, maile* is still the common word for rent. *White maile*, white rents, (vulgarly called quit-rents,) were rents made in silver, and thereby distinguished from work-day rent, cummin rents, corn rents, and the like. *Black maile*, or black rents, seem properly to have been rents paid in cattle (otherwise called *neat gelt*, or *neat geld*, from the Danish *gelt, geld, geldum*, a payment of tribute); but more largely taken, it seemeth to have been used to signify all rents not paid in silver, in contradistinction to the *redditus albi*, blanch farms, or white rents. Blackmail, what.

Deadly feud.] *Feud*, in the *German*, signifies enmity, or war; as in like manner the word *foe* signifies any enemy. *Feud*, in Scotland, is a combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Deadly feud* is a profession of irreconcileable hatred, till a person is revenged even by the death of his adversary. Deadly feud.

And by the said statute, (§ 3, 4, 5, 6.) persons outlawed in any of the said counties for any such murder, robberies, burglaries or other felonies, shall in two months be certified in writing by the clerk of *Duresme, Darlington, Bishop Awkland, Barnard Castle*, and the peace to all the sheriffs of all the said counties, and the said sheriffs shall proclaim them in *Carlisle, Penrith, Cockermouth, Appleby, Kendal, Newcastle, Morpeth, Alnewick, Hexham, Berwick*, and once a month in every their county courts, till they surrender; and the mayor shall proclaim them in every fair, and every six weeks in the market, and persons relieving or conferring with them shall, on the like conviction, be imprisoned for six months, and bound to the good behaviour for a year. 43 El. c.13.

By stat. 13 & 14 *C.* 2. *c.*22. The justices of *Northumberland* and *Cumberland* may make order in sessions for charging the respective counties, for securing the same against the moss troopers (that is thieves and robbers, who after having committed offences in the borders do escape through the wastes and mosses); so as *Northumberland* be not charged above 500*l.* nor *Cumberland* above 200*l.* a-year. And they may appoint a commander, with thirty men in *Northumberland*, and twelve men in *Cumberland*, to search for, pursue, and apprehend offenders. 13 & 14 C. 2. c. 22. Moss troopers.

By stat. 29 & 30 *C.* 2. *c.* 2. The persons so employed shall be chosen in sessions yearly, or every two years at the farthest. 29 & 30 C. 2. c. 2.

And the sessions shall take security of the person by them employed for preservation of the borders, to answer the damages sustained by their neglect or default, and to pay the same in four months after proof made thereof in sessions by oath of one witness; so as the goods stolen be entered in one of the books to be kept for that purpose in forty-eight hours after they be stolen or gone; and books shall be kept for that end in every market town in the Persons employed to apprehend moss troopers. To give security.

said counties and in such other places and by such persons as the sessions shall appoint.

18 C. 2. c. 3. Notorious thieves and spoil-takers.

By stat. 18 *C.* 2. *c.* 3. Great and notorious thieves and spoil-takers, in the said counties of *Northumberland* and *Cumberland*, shall suffer death as felons without benefit of clergy; or may be transported, by order of the judges of assize, during life.

1 G. 4. c. 116.

Stat. 1 *G.* 4. *c.* 116. § 1. after reciting, that whereas by stat. 18 *C.* 2. *c.* 3. (made perpetual by stat. 31 *G.* 2. *c.* 42.) it is amongst other things enacted, that the benefit of clergy shall be taken away from great, known and notorious thieves and spoil-takers in the said counties of *Northumberland*, *Cumberland*, or either of them during the continuance of this present act, who shall be duly convicted for theft done or committed within the said counties, or either of them: enacts, that so much of the said act as is here recited, shall be and the same is hereby repealed.

Nuisance.

§ I. *What it is.*
II. *How it may be removed.*
III. *How punished.*

§ I. What it is.

Common nuisance.

A COMMON nuisance seems to be an offence against the public, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. 1 *Haw. c.* 75. § 1.

Annoyances to the prejudice of particular persons are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them. 1 *Haw. c.* 75. § 2. 4 *Blac. Com.* 167.

Difference between a private and public nuisance.

Where, note a diversity between a *private* and a *public* nuisance: if it be a *private* nuisance, he shall have his action upon his case, and recover his damages; but if it be a *public* nuisance, he shall not have an action upon his case, and this the law hath provided for avoiding of multiplicity of suits; for if any one might have an action, all men might have the like; but the law for this common nuisance hath provided an apt remedy, by presentment or indictment at the suit of the king, in the behalf of all his subjects; unless any man hath a particular damage, as if he and his horse fall into a ditch made across a highway, whereby he received hurt and loss, there for his special damage, which is not common to others, he shall have an action upon his case. 1 *Inst.* 56.

Or if one man obstruct another passing by a ditch and gate across a public road, by which the latter is obliged to go a longer and a more difficult way, and oppose the other in attempting to remove the nuisance, in that case also the latter may bring his action. *Chichester* v. *Lethbridge, Willes*, 71.

And from hence it clearly follows, that no indictment for a

nuisance can be good, which lays it to the damage of private persons only; as where it accuses a man of surcharging such a common, or of inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nuisance of all the inhabitants of such a town; or of disturbing a water-course running to such a mill, to the damage of such a person and his tenants, without saying *of all the liege subjects of the king*. 1 *Haw. c.* 75. §3.

Yet it hath been said, that an indictment of a *common scold* is good, although it conclude to the common nuisance of *divers*, instead of *all*, the king's subjects; perhaps, for this reason (says Mr. *Hawkins*,) because a common scold cannot but be a common nuisance. 1 *Haw. c.* 75. §5.

And if the law be so in this case, why should not an indictment, setting forth a nuisance to a way, and expressly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude to the nuisance of *divers*, without saying *all*, the king's subjects? And perhaps the authorities which seem to contradict this opinion might go upon this reason, that in the body of the indictment, it did not appear with sufficient certainty, whether the way, wherein the nuisance was alleged, were a highway or only a private way; and therefore that it shall be intended from the conclusion of the indictment, that it was a private way. 1 *Haw. c.* 75. §5.

"But although a nuisance may be public, yet there may be a special grievance arising out of the common cause of injury, which presses more upon particular individuals than upon others not so immediately within the influence of it. In case of stopping a common highway which may affect all the subjects, yet if a particular person sustains a special injury from it, he has an action." *Per* Ld. *Ellenborough* C. J. *R.* v. *Dewsnap*, 16 *East*, 196.

Bawdy-houses, gaming houses, and stages for rope dancers.

There is no doubt but that common *bawdy-houses* are indictable as common nuisances: and it hath been said, that all common *stages for rope-dancers*, (a) and also all common *gaming-houses*, are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw a great number of disorderly persons. 1 *Haw. c.* 75. §6. 4 *Blac. Com.* 167.

Playhouses.

Also it hath been holden, that a common *playhouse* may be a nuisance, if it draw together such a number of coaches or people, as prove generally inconvenient to the places adjacent. 1 *Haw. c.* 75. § 7.

Stopping a prospect;

Stopping a *prospect* is not a common nuisance. 3 *Salk.* 247.

Building a house in a larger manner than it was before, so that the street became dark, is not any public nuisance by reason of the darkening. *R.* v. *Webb*, 1 *Ld. Raym.* 737.

or lights.

So, erecting a shed so near a man's house that it stops up his *lights*, is not a nuisance for which an action will lie; unless the house is an ancient house, and the lights ancient lights. 2 *Salk.* 459.

An action for a nuisance does not lie for stopping another's lights, though they have continued for forty years.

So, if two men be owners of two parcels of land adjoining, and one of them doth build an house upon his land, and makes windows and lights looking into the other's land, and this house and the lights have continued by the space of thirty or forty years; yet the other may, upon his own land and soil, lawfully erect an

(a) See the case of *Jacob Hall*, 1 *Mod.* 76.

house or other thing against the said lights and windows, and the other can have no action; for it was his folly to build his house so near to the other's land. But if the former had continued for time immemorial, it is otherwise. *Bury* v. *Pope*, *Cro. Eliz.* 118.

Erecting a gate;

A *gate* erected in a highway where none had been before, is a common nuisance. 1 *Haw. c.* 75. § 9.

So, erecting a wall across a highway. 8 *T. R.* 142.

or an useless bridge.

So, a bridge built in a public way without public utility is indictable as a nuisance; and so if it be built colourably in an imperfect or inconvenient manner, with a view to throw the burthen of re-rebuilding or repairing it immediately on the county. 2 *East.* 342. *Vide per Grose* J. 351.

Every unauthorised obstruction of a highway, to the annoyance of the king's subjects, is an indictable offence.

It appears to have been holden, that an indictment will not lie for setting a person on the footway in a street to distribute handbills, whereby the footway was impeded and obstructed; nor for throwing down skins into a public way by which a personal injury is accidentally occasioned. *R.* v. *Gill*, 1 *Str.* 190.; but acts of this kind, if improperly performed, might possibly be deemed nuisances; as it seems now to be well established that every unauthorised obstruction of a highway, to the annoyance of the king's subjects, is an indictable offence. *R.* v. *Cross*, 3 *Campb.* 227. Thus where a *waggoner* occupied one side of a public street in the city of *Exeter*, before his warehouses, in loading and unloading his waggons, for several hours at a time, both day and night, and had one waggon at least usually standing before his warehouses, so that no carriage could pass on that side of the street, and sometimes even foot passengers were incommoded by cumbrous goods lying on the ground on the same side, ready for loading, he was held to be indictable for a public nuisance; although it appeared that sufficient space was left for two carriages to have passed on the opposite side of the street. *R.* v. *Russell*, 6 *East*, 427. Upon the same principle it has been held to be an indictable offence for *stage coaches* to stand plying for passengers in the public streets; and Lord *Ellenborough* C. J. said, "a stage coach may set down or take up passengers in the street, this being necessary for public convenience, but it must be done in a reasonable time; and private premises must be procured for the coach to stop in during the interval between the end of one journey and the commencement of another." *R.* v. *Cross*, 3 *Campb.* 224. In the same case his lordship intimated, that there would be no doubt but that if coaches, on the occasion of a rout, should wait an unreasonable length of time in a public sreet, and obstruct the transit of H. M.'s subjects wishing to pass through it in carriages or on foot, the persons who might cause and permit such coaches so to wait would be guilty of a nuisance. See 1 *Russ.* 463.

From *R.* v. *Jones*, 3 *Campb.* 230. it appears also that an obstruction to a public highway will not be excused, on the plea of its being necessary for the carrying on of the party's business, though such obstruction be only occasional. It was proved that the defendant, who was a *timber merchant*, occupied a small timber yard close to a street, and that from the narrowness of the street, and the construction of his own premises, he had, in several instances, necessarily deposited long sticks of timber in the street, and had them sawed into shorter pieces there before they could be carried into his yard: and it was contended on his behalf, that he had a right to do so, as it was necessary to the carrying on of

his business; and that it could not occasion more inconvenience to the public than draymen taking hogsheads of beer from their drays and letting them down into the cellar of a publican. But Lord *Ellenborough* C. J. said, "If an unreasonable time is occupied in the operation of delivering beer from a brewer's dray into the cellar of a publican, this is certainly a nuisance. A cart or waggon may be unloaded at a gateway; but this must be done with promptness. So as to the repairing of a house; the public must submit to the inconvenience occasioned necessarily in repairing the house; but if this inconvenience is prolonged for an unreasonable time, the public have a right to complain, and the party may be indicted for a nuisance. The rule of law upon this subject is much neglected, and great advantages would arise from a strict and steady application of it. I cannot bring myself to doubt of the guilt of the present defendant. He is not to eke out the inconvenience of his own premises by taking in the public highway into his timber yard; and if the street be narrow, he must remove to a more commodious situation for carrying on his business."

In an action on the case for obstructing a highway, by means of which the plaintiff was thrown from his horse and injured, &c., it appeared that the plaintiff was riding through the streets as fast as his horse could go, and that if he had used ordinary care he must have seen the obstructions. The verdict was for the defendant; and upon application for a rule to shew cause why there should not be a new trial, it was refused, and Lord *Ellenborough* C.J. said, that two things must concur to support this action, an obstruction in the road by the fault of the defendant, and no want of ordinary care to avoid it on the part of the plaintiff. *Butterfield* v. *Forrester*, 11 *East*, 60.

Brewhouse, glasshouse, hog-chandler's shop.

It hath been holden, that it is no common nuisance to *make yard candles* in a town, because the needfulness of them shall dispense with the noisomeness of the smell; but the reasonableness of this opinion seems justly to be questionable, because, whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town; and surely the trade of a *brewer* is as necessary as that of a chandler; and yet it seems to be agreed, that a brewhouse erected in such an inconvenient place wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance: and so in like case may a *glass-house* or a *swine-yard*. 1 *Hawk*. *c*.75. § 10.

Making offensive liquors.

Two persons were indicted for making great quantities of *noisome*, *offensive*, and *stinking liquors*, called acid spirit of sulphur, oil of vitriol, and oil of aqua fortis, whereby the air was impregnated with noisome and offensive smells: and it was held by the court to be a nuisance. The word *noisome* comes in the place of the Latin *nocivus*, and means not only disagreeable, but hurtful. And Lord *Mansfield* C. J. said, it is not necessary to constitute the offence that the smell should be *unwholesome*; it is enough if it render the enjoyment of life and property *uncomfortable*. *R*. v. *White* & *Ward*, 1 *Burr*. 333.

Making great noises in the night.

A person was indicted for making great noises in the night with a *speaking trumpet*, to the disturbance of the neighbourhood;

and it was held by the court to be a nuisance. *R.* v. *Smith*, 2 *Str.* 704.

A dove-cote. But it hath been resolved, that neither an old nor a new *dove-cote* is a common nuisance; but perhaps if a tenant hath erected one without a licence of the lord of the manor, the lord may have an action on the case against him. 1 *Haw. c.* 75. § 8.

A monster. A *monster* shewn for money is a misdemeanour. *Harring* v. *Walrond*, 2 *Cha. Ca.* 110. It was a monstrous child, that died and was embalmed to be kept for shew; but was ordered by the Lord Chancellor to be buried.

A dog that kills sheep. If a man have a *dog* that kills sheep, that is not a public nuisance; but the owner of the dog (knowing thereof) is liable to an action; but if he be ignorant of such quality, he shall not be punished for this killing; and in an action upon the case for such killing, the plaintiff shall be required to prove in evidence that the dog had used to kill sheep. *Dyer*, 25. *Het.* 171.

An unruly horse. If a man has an unruly *horse* in his stable, and leaves open the stable door, whereby the horse gets forth and doth mischief, an action lies against the master. 1 *Vent.* 295.

A bull. In the case of *Buxendin* v. *Sharp*, 2 *Salk.* 662. The plaintiff declared that the defendant kept a *bull* that used to run at men, but did not say that the defendant knew of this quality; it was adjudged that an action did not lie, unless it did appear that the master knew of this quality.

Beasts feræ naturæ. There is a difference between beasts that are *feræ naturæ*, as lions and tigers, which a man must always keep up at his peril, and beasts that are *mansuetæ naturæ*, and break through the tameness of their nature, such as oxen and horses. In the latter case an action lies, if the owner have had notice of the quality of the beast; but in the former case an action lies without such notice. 2 Ld. *Raym.* 1582.

But after such wild beasts have escaped from their keeper, so as to regain their natural liberty, he that kept them before shall not answer for the damage they shall commit after he has lost them, and they have resumed their wild nature. 1 *Vent.* 295.

A mastiff. A *mastiff* going in the street unmuzzled, from the ferocity of his nature being dangerous, and cause of terror to H. M.'s subjects, seemeth to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large.

Persons infected with small-pox. It is an indictable offence unlawfully and injuriously to carry a child infected with the small-pox along a public highway, in which persons are passing, and near to the habitations of the king's subjects. *R.* v. *Vantandillo*, 4 *M.* & *S.* 73.

And it is also an indictable offence in an apothecary, after having inoculated children, unlawfully and injuriously to cause them to be exposed in the public street, to the danger of the public health. *R.* v. *Burnett*, 4 *M.* & *S.* 272. *Le Blanc* J. in passing sentence in this case observed, that the introduction of vaccination did not render the practice of inoculating for the small-pox unlawful; but that in all times it was unlawful and an indictable offence to expose persons infected with contagious disorders, and therefore liable to communicate them to the public in a place of public resort.

N. B. *The defendant was sentenced to six months' imprisonment.*

No length of time will legitimate a public nuisance. See *Weld* v. *Hornby*, Clerk, 7 *East*, 195. *Per Ld. Ellenborough* C. J. *R.* v. *Cross*, 3 *Campb.* 227. *Coupland* v. *Hardingham*, *id.* 398.

§ II. How it may be removed.

It seemeth to be certain that any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house erected in a highway, or the like; for if one whose estate is or may be prejudiced by a *private* nuisance actually erected, as a house hanging over his ground, or stopping his lights, may justify the entering into another's ground and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate, it cannot but follow *à fortiori* that any one may lawfully destroy a *common* nuisance: And as the law is now holden, it seems that in a plea justifying the removal of the nuisance, a man need not shew that he did as little damage as might be. 1 *Haw. c.* 75. § 12. **Any person may remove a common nuisance.**

But although he may remove the nuisance, yet he cannot remove the materials, or convert them to his own use. *Dalt. c.* 50.

But so much of the thing only as causes the nuisance ought to be removed: As if a house be built too high, only so much of it as is too high should be pulled down. 9 *Rep.* 53. *God.* 221. 2 *Str.* 686.

And in the case of a *glass-house*, the judgment was to abate the nuisance; but not by pulling the house down, but only to prevent its being again used as such. *Co. Ent.* 92.

§ III. How punished.

It is said that a common scold is punishable (after conviction upon indictment) by being placed in a certain engine of correction called the trebucket or cucking stool. 1 *Haw. c.* 75. § 14. **Punishment by cucking stool.**

Note, *cuck* or *guck* in the *Saxon* tongue (according to Ld. *Coke*), signifieth to scold or brawl; taken from the bird *cuckoo* or *guckhaw*, and *ing* in that language signifieth water; because a scolding woman was for her punishment soused in the water. 3 *Inst.* 219. The common people in the northern parts of *England*, amongst whom the greatest remains of the ancient *Saxon* are to be found, pronounce it *ducking stool;* which perhaps may have sprung from the *Belgic* or *Teutonic ducken*, to dive under water; from whence also probably we denominate our *duck* the water fowl: or rather it is more agreeable to the analogy and progression of languages to assert, that the substantive *duck* is the original, and the verb made from thence; as much as to say, that to *duck* is to do as that fowl does.

And she may be convicted without setting forth the particulars in the indictment. 2 *Haw. c.* 25. § 59.

Nevertheless, the offence must be set forth with convenient certainty; and the indictment must conclude not only *against the peace*, but *to the common nuisance of divers of H. M.'s liege subjects*. And in the case of *R.* v. *Margaret Cooper*, 2 *Str.* 1246, the defendant was convicted on an indictment *for being a common and turbulent brawler, and sower of discord amongst her quiet and honest neighbours, so that she hath stirred, moved, and incited divers*

strifes, controversies, quarrels, and disputes, amongst H. M.'s liege people, against the peace, &c. It was moved in arrest of judgment that the charge was too general, and did not amount to being either a barrator or common scold, which are the only instances in which a general charge will be sufficient. It was likewise objected that if the words did amount to a description of a scold, yet it should be laid to be to the common nuisance of her neighbours; for every degree of scolding is not indictable. And the court was of opinion, that the judgment ought to be arrested on both exceptions; for none of the words here used are the technical words; and it must be laid to be to the common nuisance. (*a*)

Punishment by fine and imprisonment, and to remove the nuisance if it be continuing.

There is no doubt but that whoever is convicted of nuisance may be fined and imprisoned; and it is said that one convicted of a nuisance done to the king's highway may be commanded by the judgment to remove the nuisance at his own costs; and it seems to be reasonable that those who are convicted of any other common nuisance should also have the like judgment. 1 *Haw. c.* 75. § 14. 2 *Str.* 686.

But unless the nuisance be stated to be continuing, there need not be judgment to abate it; for every judgment should be adapted to the nature of the case; so that where the nuisance exists at the time of the judgment, there ought to be a demolition; but not otherwise. *R.* v. *Stead*, 8 *T. R.* 142. *vide per Lawrence J.*

If the party who has been indicted for a nuisance continue the same, he may be again indicted for such continuance of the nuisance. So, though for a private nuisance two actions for the erection cannot be had, yet a second action for the continuance thereof may be sustained. 1 Ld. *Raym.* 370.

The defendant shall not be allowed to make any objections against the indictment, until he hath pleaded to it. *Dalt. c.* 66.

And the court never admits a person convicted of a nuisance to a small fine, until proof is made of the nuisance being removed. *Dalt. c.* 66.

All common nuisances are indictable not only at the sessions, but also in the torn and leet. 2 *Haw. c.* 10. § 59.

An act of general pardon only discharges the fine, but not the abatement of the nuisance. 2 *Salk.* 458.

There are many offences by particular statutes declared to be common nuisances, which are treated of under their respective titles.

Steam Engines.

1 & 2 G. 4. c. 41.

By stat. 1 & 2 *G.* 4. *c.* 41. intituled "*An act for giving greater facility in the prosecution and abatement of nuisances arising from furnaces used, and in the working of steam engines.*"

§ 1. After reciting that, *whereas great inconvenience has arisen, and a great degree of injury has been and is now sustained by H. M.'s subjects, in various parts of the United Empire, from the improper construction as well as from the negligent use of furnaces employed in the working of engines by steam: and whereas by law every such nuisance, being of a public nature, is abateable as such*

(*a*) It seemeth to savour not much of gallantry, that our ancestors supposed none but women could be guilty of this offence: for the technical words denoting the same, whilst the proceedings were in Latin, were all of the feminine gender: as *rixatrix, calumniatrix, communis pugnatrix, communis pacis perturbatrix,* and the like.

by indictment; but the expence attending the prosecution thereof has deterred parties suffering thereby from seeking the remedy given by law: it is enacted, "That it shall and may be lawful for the court by which judgment ought to be pronounced in case of conviction on any such indictment, to award such costs as shall be deemed proper and reasonable to the prosecutor or prosecutors, to be paid by the party or parties so convicted as aforesaid, such award to be made either before or at the time of pronouncing final judgment, as to the court may seem fit." 1 & 2 G. 4. c.41. Court may award costs.

§ 2. "That if it shall appear to the court by which judgment ought to be pronounced in case of conviction on any such indictment, that the grievance may be remedied by altering the construction of the furnace so employed in the working of engines by steam, it shall be lawful to the court, without the consent of the prosecutor, to make such order touching the premises, as shall be by the said court thought expedient for preventing the nuisance in future, before passing final sentence upon the defendant or defendants so convicted. Court may make order for preventing the nuisance.

§ 3. Provides and enacts, "That the provisions of this act, as far as they relate to the payment of costs and the alteration of furnaces, shall not extend or be construed to extend to the owners or proprietors or occupiers of any furnaces of steam engines erected solely for the purpose of working mines of different descriptions, or employed solely in the smelting of ores and minerals, or in the manufacturing of the produce of such ores or minerals on or immediately adjoining the premises where they are raised." Not to extend to owners of furnaces erected solely for working of mines.

§ 4. This act shall commence from the first day of *September*, 1821. Commencement of ac

General Indictment for a Nuisance.

County of ——— to wit. } *THE jurors for our lord the king upon their oath present, that* A. O., *late of* ———, *in the county of* ———, *yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ———, *and on divers other days and times, as well before as afterwards, with force and arms at* ———, *in the said county,* [here set forth the nuisance]; *and the same* (*a*) (nuisance) *so as aforesaid done doth yet continue and suffer to remain, to the common nuisance of all the lieges and subjects of our said lord the king, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

(*a*) If the nuisance do not continue, this paragraph must be omitted.

Oaths.

§ I. Of Oaths in general.

AN oath is a solemn asseveration made as strong and binding as possible, in order to beget faith and confidence in others, as to the certainty of what is affirmed. When men swear, nothing can make their asseveration so strong and binding as the invocation of God to be their witness or avenger. See *D'Oyley and Mant's Bible*, *Deut.* c. 1. v. 34. (*n*).

Oath. Oath is a corruption of the *Saxon* word *eoth*. 3 *Inst.* 165.

Corporal oath. It is called a corporal oath, because the person lays his hand upon some part of the scriptures when he takes it. 3 *Inst.* 165.

Oath taken on the common prayer-book. If the oath be taken on the common prayer-book, which hath the epistles and gospels, it is good enough, and perjury upon the statute may be assigned upon his oath. 2 *Keb.* 314.

So help me God. The words, *So help me God,* in the common form of an oath, perhaps may have been first used in the very ancient manner of trial by battel in this kingdom, or at least are delivered with a peculiar emphasis in that solemnity; wherein the appellee lays his right hand on the book, and with his left hand takes the appellant by the right, and swears to this effect: *Hear this, thou who callest thyself* John *by the name of baptism, whom I hold by the hand, that falsely upon me thou hast lied; and for this thou liest, that I who call myself* Thomas *by the name of baptism did*

not feloniously murder thy father W. *by name.*——*So help me God;*—(and then he kisses the book, and says) *and this I will defend against thee by my body, as this Court shall award.* And so the appellant is sworn in like manner.

There hath been much doubt, how far justices of the peace have power to administer an oath. The statute 15 *G.* 3. *c.* 39. hath in one instance ascertained and declared their power as follows: "*Whereas it is frequently necessary for justices of the peace to administer oaths or affirmations, where* penalties *are to be levied, or* distresses *to be made in pursuance of acts of parliament, which they have no power to administer, unless authorised so to do by such acts respectively,*" it is therefore enacted, "*That in all cases where any* penalty *is directed to be levied, or* distress *to be made, by any act of parliament now in force, or hereafter to be made, it shall and may be lawful for any justice or justices, acting under the authority of such acts respectively, and he and they is and are hereby authorised and empowered to administer an oath or oaths, affirmation or affirmations, to any person or persons, for the purpose of levying such* penalties or *making such* distresses *respectively.*" Justices' power to administer an oath. 15 G. 3. c. 39.

But, except in the particular instances here specified, the matter remains as doubtful as it was before, or perhaps more doubtful, as it may induce an inquiry into other branches of the office of a justice of the peace, which possibly may be liable to the same objection.

And there seems to be some ambiguity upon the face of the act itself. For there are three different forms of expression in acts of parliament giving power to justices to levy penalties and make distresses; one is, where an act says generally, that such an offence shall be heard and determined by one or more justices, without expressing the particular mode of conviction. The second is, where an act says, that the conviction shall be upon the oath of one or more witness or witnesses. And the third is, where the act goes further and says——*which oath such justice is hereby empowered to administer.*

If it be the last of these only that the acts refers to, it is certain there are numberless instances where convictions are required by acts of parliament to be made on the oaths of witnesses, which acts give no express power to the justices to administer such oaths; and if upon the said acts no oath, before this remedial act, could be administered, they must necessarily be understood as having been hitherto nugatory, and the convictions thereupon merely void. The famous game act of 5 *Ann. c.* 14., and many other game acts consequent thereupon, require the conviction to be upon oath, but do not expressly authorise the justices to administer the said oath. So also many penalties relating to the poor; to the woollen, linen, fustian, cotton, leather, iron and other manufactures; to the wages of servants, labourers and artificers; and even in the late dog act, where the penalties are very large: and on a yet later act, 13 *G.* 3. *c.* 63., relating to the silk manufacture, where some of the penalties are not less than 50*l.*, are directed to be recovered by the oaths of witnesses, and yet the justices are not empowered by any of the acts respectively to administer the said oaths.

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But be this as it may, it is evident that this remedial act doth not extend to any case where an oath is not mentioned in the act, but where only a general power is given to the justices to take cognizance; and it may be argued, that, if where an oath is necessary, yet the justices cannot proceed unless authorised by the several acts respectively to administer such oath, it follows *à fortiori*, that where no oath is mentioned, there no oath can be by them administered. And this is the case of all the ancient statutes so far down as the latter end of the reign of queen *Elizabeth*. For they only express in general, that the justices shall have power to *hear and determine*——shall *inquire* of such and such offences——shall *inquire, hear and determine by their discretions*——shall *convict offenders by witness, confession, or otherwise*. The statute of 43 *El. c.* 7. against hedge-breaking and robbing of orchards is the first statute that specially requires the conviction to be upon oath; and in many subsequent statutes, it is only expressed that the conviction shall be before the justices without any mention of an oath at all.

Besides, there are many other acts to be done by justices of the peace which have no relation to the levying of penalties or making distresses: and it may be argued from analogy, that if they have not power to administer an oath in one case, they have not power to administer it in another, under the like circumstances. As for instance: sometimes the penalty, after conviction, is not pecuniary to be levied by distress, but corporal, by commitment to the house of correction, or otherwise; and yet the acts authorising and directing the proceedings run in the very same style and form of words, only this act of the 15 *G.* 3. *c.* 39. heals the defect in one case, but leaves the matter open as to the rest, and unless the circumstances can be distinguished, may affect the office of a justice of the peace in a most essential and vital part: for, to convict, and in consequence thereof to imprison an offender without oath, or (which is the same thing) by virtue of an oath which the justice hath no power to administer, argues a very feeble and imperfect jurisdiction, and such as no one, without being well advised, would readily choose to exercise.

Indeed, very few of the oaths administered by justices of the peace have the aforesaid sanction of a special authority given by the several acts to support them. No act of parliament gives a special power to administer the oath of office to a gauger in the excise, a commissioner of sewers, or a sheriff's bailiff; to a soldier enlisted in H. M.'s forces; to an out-pensioner of *Chelsea* Hospital, in order to receive his pension; to a pauper wanting relief; to a person apprehended as a rogue and vagabond; to a landlord on the tenant's conveying away his goods clandestinely; to a person robbed, in order to bring his action against the hundred: All these, and many other such like, are directed to be administered by the respective acts of parliament, which acts, nevertheless, have no clause authorising the justices to administer the said oaths. Nay, further than this, in matters of daily practice, so far from an additional clause authorising the administering of an oath, there is no act of parliament now existing that requires the justices to take any examination upon oath either on the removal of a pauper to his settlement, or the filiation of a bastard child before the two next justices. So that the oaths which upon those occasions are

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administered are only of congruity, as supposed incident to, and necessarily annexed to the office of a justice of the peace; and if they cannot be supported upon that foundation, it is easy to conjecture what must be the consequence.

It may be worth while, in a few words, to consider what hath been advanced by learned men upon this subject. It hath been urged that the very act of parliament which gives power to the justices to hear and determine, and the commission of the peace consequent thereupon do, without more, give to the justice every thing necessary for the execution of that power; according to that saying of Lord *Coke* upon another occasion, that when the law granteth any thing, that also is granted without which the thing itself cannot be. And so it seems to have been understood for upwards of two hundred years; for from the first institution of the office to the latter end of the reign of Queen *Elizabeth* (as I observed before), the special mode of conviction by oath is never mentioned. But then it is to be remarked, that during all that period the justices were considered as acting in their sessions by a jury, in like manner and form of proceeding, as in other the king's courts of record. And it was not until smaller matters, such as hedge-breaking, servants' wages, frequenting alehouses, and such like, were brought under the jurisdiction of justices of the peace, that the administering of an oath became specially directed. These lesser matters were thought too trifling to bring the country together about them; and therefore it was ordained that they shall be heard and determined by one or more justices out of sessions, and without a jury. And hereby a new kind of judicature being established, it became necessary to limit and define the particular mode of proceeding; as that the justice should have power to convict by *confession of the party*, by *view of the justice*, or by *examination of witnesses*, which examination at that time no doubt was understood to be upon oath, for they knew of no other judicial examination. But for the greater precision, and to prevent any shadow of ambiguity, very many statutes giving this summary jurisdiction in particular cases where an oath is required, have this additional clause, *which oath such justice is hereby empowered to administer*. Nevertheless, there are so many statutes of the like kind which do not observe this distinction, and others which never mention any oath at all, that it seemeth difficult upon these premises to form any general conclusion. What hath been principally intended seems to have been, to specify that the conviction, in such cases, shall be in a summary manner without the help of a jury, and, consequently, that the justice in that respect is constituted in the place of both judge and jury, and as such must proceed after the course of the common law, when not directed otherwise by special words in the act of parliament.

On the other hand, the authority of Lord *Coke* is alleged in this matter against such general power; who, in treating of the oath of office to be taken, in pursuance of the statute of the 13 *Ed.* 1. *stat.* 1. *c.* 47. by the conservators of the *Humber*, *Ouse*, *Trent*, and other rivers, in relation to the taking of salmon, says, a new oath cannot be imposed upon any judge, commissioner, or any other subject, without authority of parliament, as here it was; but the giving of every oath must be warranted by act of parliament, or

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by the common law time out of mind. 2 *Inst.* 479. But this does not contradict the former position, but rather confirms it, admitting the common law as a rule for the giving of oaths.

1 & 2 Ph. & M. c. 13. Taking bail of persons arrested for felony.

The stat. 1 & 2 *Ph. & M. c.* 13. empowering the justices out of sessions to take bail of persons arrested for felony, prescribes that the justices shall *take the examination of the prisoner and the information of them that bring him*, but doth not express that the information shall be upon oath. Upon which Mr. *Lambard* observes as follows (p. 213.): Because (says he) some justices do use to take this information of the bringers upon their oaths, and some others do receive it without any oath at all; let us see what is wont to be said on either side, that every man may the better understand what way to incline and follow. They which take this information without any oath, say, that if the makers of this statute had meant that an oath should be taken, then would they have expressed so much; even as the statutes for bankrupts, 34 *H.*8. *c.*4. and 13 *El. c.* 7., the statute of accountants, 5 *R.*2. *c.* 13., the statute of labourers, 2 *H.*5. *c.*4., and the statute of choosing knights of the parliament, 8 *H.*6. *c.*7. have done before. In all which, and some other statutes, examination upon oath is given by express and plain words. But they on the contrary side do strongly defend their exacting an oath, by the example of the justices of the higher courts; and do allege, that whereas stat. 5 *H.*4. *c.* 8. did ordain, without any mention of an oath, that in an action of debt upon the arrearages of an account, the justices should have power to examine the attornies and others, the justices of the bench do use in that case to minister an oath to the persons examined. The like, they say, is daily done and practised in all the examinations of summoners, viewers, sheriffs' clerks and other officers, that do happen in the higher courts at *Westminster;* and Mr. *Brooke* (tit. *Examination*, 32.) is of opinion that every examination is to be handled upon oath. And therefore belike (say they) the statute of 2 *Ed.*6. *c.* 13. giving power to the ordinary to examine a man for his personal tithe, excepteth an oath, as though otherwise he might have required it of him. Besides all this, they add, for reason, that if these informers be examined upon oath, then although it should happen to them to die before the prisoner have his trial, yet may their information be given in evidence, as a matter of good credit; whereas otherwise, it would be of little or no weight at all, and thereby offenders should the more easily escape. And he adds, to this latter opinion, I myself am ready to subscribe, as well because I have heard some judges of assize deliver their minds accordingly, as also for that I have found by experience, that, without such an oath many informers will speak coldly against a felon before the face of the judge, having perhaps first made their bargain with the offender or his friends, before that the judge did hear of the cause.

Mr. *Dalton*, upon the same subject says, the person accused shall not be examined upon oath, for by the common law no man is obliged to accuse himself. But it seemeth convenient (he says), in cases of felony especially, that the information of the bringer and others, which the justices do take against the prisoner, be upon oath; otherwise upon the trial of the prisoner, such information taken by the justice shall not be read or delivered to

the jury, nor given in evidence against the prisoner upon his trial. And so was the direction of the Ld. C. J. *Coke* at *Cambridge Sum. Ass.*, upon the trial of a felon; for, said he, in case of a trespass, although it be only to the value of two-pence, no evidence shall be given to the jury but upon oath, much less where the life of a man is in question. *Dalt. c.*164. p.380. **Justices' power to administer an oath.**

And Ld. *Hale*, speaking of the same statute, is express that the information of the prosecutor or witnesses ought to be upon oath, although the statute doth not mention an oath; which information, upon oath, being sworn on the trial to be truly taken by the justice or his clerk, may be given in evidence against the prisoner, if the witnesses be dead or not able to travel. 1 *Hale*, 586.

Finally, Mr. *Dalton*, in another place, speaking of the case, where one justice may punish offenders upon accusation or proof generally, says, it seemeth that this must be by examination of witnesses; and though the statute doth not expressly set down that it shall be upon oath, yet it seemeth fit that the justice do it upon oath: yet in all other cases, wheresoever any man is authorised to examine witnesses, such authority to examine shall be taken and construed to be in such manner as the law will, which is only by oath. *Dalt. c.*66. *old edit.*

Upon the whole, this difference of opinion, concerning the power of justices of the peace to administer oaths in the several cases that may happen, is a matter of most serious consideration; and there being by the aforesaid act of 15 *G.*3. *c.*39. a parliamentary declaration in one instance, which, so far as it goes, determines against a general power of the justices; and it being uncertain how far by parity of reason the like construction may be extended to other instances, it is humbly submitted, whether it might not be expedient to enact once for all, that in all cases where [by immemorial usage, or the common law, or] by any act of parliament justices of the peace have cognizance, they shall have power to administer an oath. 15 G.3. c.39.

But should this salutary enactment be made, it would in no degree sanction a practice which has sometimes prevailed, — that of administering oaths in cases where justices of the peace have no jurisdiction; the evil of which is clearly stated by Mr. Justice *Blackstone*, who says, (4 *Com.* 137.) "The law takes no notice of any perjury but such as is committed in some court of justice having power to administer an oath; or before some magistrate or proper officer, invested with a similar authority, in some proceedings relative to a civil suit or a criminal prosecution: for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them. For which reason it is much to be questioned, how far any magistrate is justifiable in taking a voluntary *affidavit* in any extra-judicial matter, as is now too frequent upon every petty occasion; since it is more than possible, that by such idle oaths a man may frequently *in foro conscientiæ* incur the guilt, and at the same time evade the temporal penalties, of perjury."

Lord *Coke* says "Oaths that have no warrant by law, are rather *nova tormenta, quam sacramenta;* and it is a high contempt to minister an oath without warrant of law, to be punished by fine and imprisonment." 3 *Inst.*165.

The court of K. B. has often reprehended and discouraged, as much as possible, the taking of voluntary affidavits by justices of the peace, in extra-judicial matters. In the case of *Bramah* v. *the —— Fire Insurance Company, M.* 1800, in *B. R.* Ld. *Kenyon* C. J. said, "He did not know but that a magistrate subjects himself to a criminal information for taking a voluntary extra-judicial affidavit." *Wms. Prec.* 14.

49 G. 3. c. 65. Justices' power to administer oaths in questions relating to penalties under the customs' statutes.

By stat. 49 *G.* 3. *c.* 65. § 1., which is an act giving jurisdiction to justices of the peace in matters relating to the revenue of customs, power is given to them to administer oaths upon all prosecutions before them, for penalties incurred by any offence against any act then in force or thereafter made relating to the revenue of customs. (*See this stat.* Vol. II. *tit.* Excise & Customs, § I. (*p.*) p. 46.

§ II. Oath of Allegiance.

1 G. 1. st. 2. c. 13. Summoning persons to take the oaths.

By stat. 1 *G.* 1. *st.* 2. *c.* 13. § 10, 11. Two justices may summon, by writing under hand and seal, any person whom they shall suspect to be dangerous or disaffected to the government, to appear before them at a certain day and time therein to be appointed to take the oaths of allegiance, supremacy, and adjuration; and if such person neglect or refuse to appear, then on due proof made on oath of the summons having been served on such person, or left at his dwelling-house, or usual place of abode, with one of the family there, they shall certify the same to the next sessions, there to be recorded by the clerk of the peace. And if such person shall neglect or refuse to appear and take the oaths at the said sessions (the name of such person being publicly read at the first meeting of the said sessions), then such person shall be esteemed and adjudged a popish recusant convict; and the same shall be thence certified by the clerk of the peace into the chancery or king's bench, to be there recorded.

Whom they shall suspect.] It seemeth that a bare suspicion is not sufficient, but there should be some good cause of suspicion, and that the cause of suspicion is traversable. *Read.* Oaths.

Refuse — to take the oaths.] A person cannot be said to *refuse* the oaths, unless they be read to him or offered to be read. *Read.* Oaths.

The oath of allegiance by stat. 1 *G.* 1. *st.* 2. *c.* 13.

Oath of allegiance.

I A. B., *do sincerely promise and swear that I will be faithful and bear true allegiance to his majesty king* George: *So help me God.*

Of the oath of allegiance.

Every layman, above the age of twelve years, was anciently obliged to take the oath of allegiance at the torn or leet, and it was a high contempt to refuse it. 1 *Inst.* 68.

But the clergy were not obliged to take the oath of allegiance till the Reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *Hale*, 71, 72.

Ld. *Hale*, speaking of the ancient oath of allegiance, which continued above six hundred years, says, that therein the prudence of the common law is observable, that it was short and plain, not entangled with long and intricate clauses or declarations, but that the sense of it was obvious to the most common understand-

ing, and yet withal comprehensive of the whole duty of a subject to his prince. And from this the present form of the oath of allegiance hath not much varied. 1 *Hale*, 63.

§ III. Oath of Supremacy.

The oath of supremacy came in upon abolishing the papal authority at the Reformation. Of the oath of supremacy.

The oath of supremacy by stat. 1 *G.* 1. st. 2. *c.* 13.

I A. B. *do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position that princes excommunicated or deprived by the pope or any authority of the see of* Rome *may be deposed or murthered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate, hath, or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.* Oath of supremacy.

So help me God.

§ IV. Oath of Abjuration.

The oath of abjuration came in after the revolution; received some alterations in the first year of Queen *Anne;* and again in the first year of King *George* the first; and finally in the sixth year of King *George* the third. Of the oath of abjuration.

Perhaps it might by wished, that it were made more applicable to Lord *Hale*'s rule, in being more short and plain; there being in it several hard words, which probably many who take it do not well understand; and there being an act of parliament therein referred to, which perhaps not one in fifty who take it have consulted.

The oath of abjuration by stat. 6 *G.* 3. *c.* 53. 6 G. 3. c. 53.

I A. B. *do truly and sincerely acknowledge, profess, testify, and declare, in my conscience, before God and the world, that our sovereign lord king* George *is lawful and rightful king of this realm, and all other his majesty's dominions and countries thereunto belonging: and I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be prince of* Wales *during the life of the late king* James *the second, and, since his deeease, pretended to be, and took upon himself the style and title of king of* England, *by the name of* James *the third, or of* Scotland, *by the name of* James *the eighth, or the style and title of king of* Great Britain, *hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging: and I do renounce, refuse, and abjure any allegiance or obedience to any of them. And I do swear, that I will bear faith and true allegiance to his majesty king* George, *and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, and his successors, all treasons and traitorous conspiracies which I shall know to be against him, or any of them.* Oath of abjuration.

And I do faithfully promise, to the utmort of my power, to support, maintain, and defend the succession of the crown, against the descendants of the said James, *and against all other persons whatsoever, which succession, by an act intituled,* An act for the further limitation of the crown, and better securing the rights and liberties of the subject, *is and stands limited to the princess* Sophia, *electress and duchess dowager of* Hanover, *and the heirs of her body being protestants.* (*a*) *And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian. So help me God.*

(*a*) *Viz.* stat. 12 & 13 W.3. c. 2.

§ V. Declaration against Transubstantiation.

Declaration against transubstantiation.

The declaration against transubstantiation, by stat. 25 *C.* 2. *c.* 2. § 9.

25 C. 2. c. 2.

I A. B. *do declare, that I do believe that there is not any transubstantiation in the sacrament of the Lord's Supper, or in the elements of bread and wine, at or after the consecration thereof by any person whatever.*

§ VI. Declaration against Popery.

30 C. 2. st. 2. c. 1.

The declaration against popery, by stat. 30 *C.* 2. *st.* 2. *c.* 1.

Declaration against popery.

I A. B. *do solemnly and sincerely in the presence of God profess, testify, and declare, that I do believe that in the sacrament of the Lord's Supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever: and that the invocation or adoration of the Virgin* Mary, *or any other saint, and the sacrifice of the mass, as they are now used in the church of* Rome, *are superstitious and idolatrous. And I do solemnly in the presence of God profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by* English *protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other person or persons, or power whatsoever, shall dispense with or annul the same, or declare that it was null or void from the beginning.*

§ VII. Quakers' Affirmation.

By stat. 7 & 8 *W.* 3. *c.* 34. § 1. It is enacted, that every Quaker who shall be required, upon any lawful occasion, to take an oath in any case where by law an oath is required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in these words following; *viz.* 7 & 8 W. 3. c. 34.

I A. B. *do declare, in the presence of Almighty God, the witness of the truth of what I say.*

§ 2. Which said solemn affirmation shall be of the same force and effect in all courts of justice as if such Quaker had taken an oath in the usual form.

§ 3. And if any Quaker making such solemn affirmation shall be lawfully convicted, wilfully, falsely, and corruptly to have affirmed or declared any matter or thing which, if it had been in the usual form, would have amounted to wilful and corrupt perjury, every such offender shall incur the same penalties and forfeitures as are enacted against persons convicted of wilful and corrupt perjury.

§ 6. Provided, that no Quaker or reputed Quaker shall, by virtue of this act, be permitted to give evidence in any criminal causes, or serve on any juries, or bear any office or place of profit in the government.

This act was only to continue in force for seven years; but it was afterwards continued and made perpetual by stat. 1 *G.* 1. st. 2. *c.* 6. § 1.

And by stat. 22 *G.* 2. *c.* 46. § 36. It is enacted, that in all cases wherein an oath is required, &c. Quakers shall be permitted to make an affirmation, &c. under the same penalty as for wilful and corrupt perjury. 22 G. 2. c. 46.

§ 37. Provided, that no Quaker shall be qualified or permitted to give evidence in any criminal cases, or to serve on juries, or to bear any office or place of profit in the government.

In any criminal cases.] On the construction of these acts of parliament, it has been decided;

First, that where the object of the prosecution is criminal, the affirmation of a Quaker cannot be received. *R.* v. *Wych,* 2 *Str.* 872, on a motion for an information for a misdemeanour. *R.* v. *J. Gardiner,* 2 *Burr.* 1117. *S. P. Oliver* v. *Lawrence,* 2 *Str.* 946, on a motion to answer the matters in an affidavit. *R.* v. *Green,* 1 *Str.* 527. and *R.* v. *Gumbleton,* 2 *Atk.* 70., both applications to exhibit articles of the peace; but in the latter case Lord *Hardwicke* expressed his doubts, and considered it a question fit to be sent to the judges. See *Burn's E. L.* 8th ed. Vol. II. p. 197. *n.* (1) *Tyrwhitt's* note.

Secondly, even though in form it be a civil proceeding; as in an appeal of murder. *Castel* v. *Bambridge,* 2 *Str.* 856.

Thirdly, where the application is against a Quaker, there his own affirmation may be received, though the proceeding be of a criminal nature. *R.* v. *Shaklington, Andr.* 201. *n.*, *Hudson* v. *Jones, ib. R.* v. *Gardiner,* 2 *Burr.* 1117., and see 1 *Cowp.* 392.

Fourthly, where the object of the proceeding is of a civil nature, the affirmation of a Quaker may be received. *Atcheson* v. *Everit*, 1 *Cowp.* 382., an action of debt for a penalty on the bribery act. *Powell* v. *Ward*, cited in *Andr.* 200., a motion for an attachment for not performing an award. *Taylor* v. *Scott*, cited in *Cowp.* 394.; even though the proceeding be carried on in the name of the king. *R.* v. *Turner*, 2 *Str.* 1219., a rule to shew cause why an appointment of overseers should not be quashed.—It is true indeed that in the case of *Robins* v. *Sayward*, 1 *Str.* 441., the court of K. B. refused to grant an attachment for non-performance of an award on the affirmation of a Quaker, because, they said, "it is a criminal prosecution within the proviso of stat. 7 & 8 *W.* 3. *c.* 34." But as the ground on which that case was decided has since been questioned, the case itself may probably no longer be considered of any authority, especially since the cases of *Powell* v. *Ward*, and *Taylor* v. *Scott*, above referred to. When the case of *Robins* v. *Sayward* was decided, an attachment for not performing an award was considered as a criminal proceeding; but in *R.* v. *Meyers*, 1 *T. R.* 266. Mr. Justice *Buller* said, that it had been settled of late years that such an attachment was only in the nature of a civil execution.

Or bear any office or place of profit in the government.] *R.* v. *March*, 2 *Burr.* 999. By stat. 26 *G.* 2. *c.* 18. a certain oath is required to be taken and subscribed upon admission to the freedom of the *Turkey* company. *Isaac Rogers*, a Quaker, had made and subscribed his solemn affirmation and declaration to the effect of the oath. The question was, whether this ought to be admitted instead of the oath? *Per Cur.* — This is no office or place of profit in the government. This man's claim is nothing more than to be admitted into the company of merchants trading to a particular part of the world. Even the remittances of public money for the use and account of the government, given by H. M. to Quakers, though the same may be very *profitable*, yet such appointment is no *office* or *place* in the government.

8 G. 1. c. 6. General form of affirmation. The Quakers' solemn affirmation, instead of an oath, as finally settled by stat. 8 *G.* 1. *c.* 6. is as follows; *viz.*

I A. B. *do solemnly, sincerely, and truly declare and affirm.*

Instead of the oaths of allegiance and supremacy, Quakers shall be allowed to make the following declaration of fidelity, by stat. 8 *G.* 1. *c.* 6.

Declaration of fidelity. I A. B. *do solemnly and sincerely promise and declare, that I will be true and faithful to king* George; *and do solemnly, sincerely, and truly profess, testify, and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of* Rome, *may be deposed or murthered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.*

Abjuration. By the same stat. 8 *G.* 1. *c.* 6. Quakers were allowed to take the effect of the abjuration oath according to the form therein pre-

scribed. After the death of the person pretending to be king of *England* by the name of *James* the third, it became necessary to alter the form of the abjuration oath. Accordingly, by stat. 6 *G.* 3. *c.*53. a new form of abjuration oath is prescribed. But neither by that act, nor any other, is any provision made for altering the Quakers' affirmation or declaration conformable thereunto. It seemeth that the form thereof ought to be thus:

I A. B. *do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that king* George *is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe that not any of the descendants of the person who pretended to be prince of* Wales, *during the life of the late king* James *the second, and since his decease pretended to be, and took upon himself the style and title of king of* England, *by the name of* James *the third, or of* Scotland *by the name of* James *the eighth, or the style and title of king of* Great Britain, *hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging, and I do renounce and refuse any allegiance or obedience to any of them. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to king* George, *and to him will be faithful against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king* George, *and his successors, all treasons and traitorous conspiracies which I shall know to be against him or any of them. And I will be true and faithful to the succession of the crown against the descendants of the said* James, *and against all other persons whatsoever, as the same is and stands settled by an act, intituled,* An act declaring the rights and liberties of the subject, and settling the succession of the crown, *to the late queen* Anne *and the heirs of her body, being protestants; and as the same, by one other act, intituled,* An act for the further limitation of the crown, and better securing the rights and liberties of the subject, *is and stands settled and entailed, after the decease of the said late queen; and for default of issue of the said late queen, to the late princess* Sophia, *electress and duchess dowager of* Hanover, *and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.* See 8 C. 1. c. 6.

The Quakers' profession of their belief; by stat. 1 *W.* & *M.* *Sess.* 1. *c.* 18. § 13.

I A. B. *profess faith in* God *the Father, and in* Jesus Christ *his eternal son, the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration.* Profession of belief.

§ VIII. Oaths of Infidels, &c.

Jews. A Jew is to be sworn on the Old Testament, and perjury upon the statute may be assigned upon this oath. 2 *Keb.* 314.

Gomez Serra v. *Munez*, 2 *Str.* 821. Upon error in debt upon a bond, the bail, being both Jews, were suffered to put on their hats while they took the oath. And such is the practice at this day.

Heathens. At the council, *Dec.* 9. 1738. Present the two chief justices. On a complaint of *Jacob Fachina* against General *Sabine* as governor of *Gibraltar*, *Alderaman Ben Monso*, a Moor, was produced as a witness, and sworn upon the *Koran*. 2 *Str.* 1904.

So in *Omichund* v. *Barker*. 2 *Eq. Ab.* 397., 1 *Atk.* 21., *Willes*, 538. *Phill. Ev.* 21. 23. 362. 6th *ed.* 1 *Wils.* 84. In the court of chancery, the depositions of witnesses professing the *Gentoo* religion, who were sworn according to the ceremonies of their religion, taken under a commission out of chancery, were admitted to be read in evidence.

A Scotch covenanter. *David Mildrone* was produced as a witness at the *Old Bailey*, *Feb.* 1786, against a person for larceny. He stated to the Court that he was a *North Briton*, and that the way of swearing in *Scotland* was not to kiss the book. *Gould* J. said, that on the trial of the rebels at *Carlisle* in 1745, finding it to be the ceremony of a particular sect, he admitted a witness to swear by the form of holding up his hand, without touching the book or kissing it; which was afterwards determined to be right on a reference to the twelve judges; and on that authority *Mildrone* was sworn in the following form: *You swear, according to the custom of your country, and the religion you profess, that the evidence you shall give between our sovereign lord the king, and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help you God.* 1 *Leach*, 412.

And in *Rex* v. *Taylor*, *Peake's Rep.* 11., *Buller J.* would not suffer the particular opinions of a man professing Christianity to be examined into; but only asked him whether he believed the obligation of an oath, the being of a Deity, and a future state of rewards and punishments. See 1 *Phill. Ev.* 23.

But a person who has no idea of the being of a God, or a future state of rewards and punishments, is not admissible. *Rex* v. *White*, 1 *Leach*, 438. But in such a case the trial may be postponed until the witness is instructed as to the nature and obligation of an oath. See *ante, title* Infants, p. 76.

§ IX. Administering or taking unlawful Oaths.

37 G. 3. c. 123. Preamble. By stat. 37 *G.* 3. *c.* 123. intituled, "*An act for more effectually preventing the administering or taking of unlawful oaths,*" after reciting that "whereas divers wicked and evil-disposed persons have of late attempted to seduce persons serving in H. M.'s forces by sea and land, and others of H. M.'s subjects, from their duty and allegiance to H. M., and to incite them to acts of mutiny and sedition, and have endeavoured to give effect to their wicked and traitorous proceedings, by imposing upon the persons whom they have attempted to seduce the pretended obligation of oaths unlaw-

fully administered;" it is enacted, "that any person or persons who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at, or present at and consenting to, the administering or taking of any oath or engagement, purporting or intended to bind the person taking the same to engage in any mutinous or seditious purpose; or to disturb the public peace; or to be of any association, society or confederacy, formed for any such purpose; or to obey the orders or commands of any committee or body of men not lawfully constituted; or of any leader or commander, or other person not having authority by law for that purpose; or not to inform or give evidence against any associate, confederate or other person; or not to reveal or discover any unlawful combination or confederacy; or not to reveal or discover any illegal act done or to be done; or not to reveal or discover any illegal oath or engagement which may have been administered or tendered to or taken by such person or persons, or to or by any other person or persons, or the import of any such oath or engagement, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and may be transported for any term of years, not exceeding seven years; and every person who shall take any such oath or engagement, not being compelled thereto, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and may be transported for any term of years not exceeding seven years."

37 G. 3. c. 123. Persons administering unlawful oaths, or taking them voluntarily, to be guilty of felony.

In *Rex* v. *Marks and others*, 3 *East*, 157., a question was made, whether the unlawful administering of an oath by an associated body of men to a person, purporting to bind him not to reveal or discover an unlawful combination or conspiracy of persons, nor any illegal act done by them, was within this statute; the object of the association being a conspiracy to raise wages and make regulations in a certain trade, and not to stir up mutiny or sedition. The oath was, "*You shall be true to every journeyman shearman, and not to hurt any of them, and you shall not divulge any of their secrets. So help you God.*" It was contended, that the words of the statute, however large in themselves, must be confined to the objects stated in the preamble, and could not have been intended to reach a case where it was plain that the fact arose entirely out of a private dispute between persons engaged in the same trade, and was confined in its object to that alone; and that the general words, therefore, must be construed with relation to the antecedent offences, which are confined in their objects to mutiny and sedition. But the Court, though they did not upon the particular circumstances feel themselves called upon to give an express decision, appear to have entertained no doubt but that the case was within the statute. *Lawrence* J. said, "It is true, that the preamble and the first part of the enacting clause, are confined in their objects to cases of mutiny and sedition; but it is nothing unusual in acts of parliament, for the enacting part to go beyond the preamble; the remedy often extends beyond the particular act or mischief which first suggested the necessity of the law."

This statute is not confined to oaths administered for seditious purposes.

By stat. 52 *G.* 3. *c.* 104. § 1. to render the foregoing statute more effectual it is enacted, that every person who shall in any manner or form whatsoever, administer or cause to be administered, or be aiding or assisting at the administering of any oath

52 G. 3. c. 104. Punishing the administering and taking of unlawful oaths.

52 G. 3. c. 154. or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon without benefit of clergy; and every person who shall take any such oath or engagement, not being compelled thereto, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and shall be transported as a felon for the term of his natural life, or for such term of years as the court before which the said offender or offenders shall be tried, shall adjudge.

37 G. 3. c. 123. Persons compelled to take such oath, not justified, unless they declare the same within four days.

Stat. 37 *G.* 3. *c.* 123. § 2. Provides and enacts, that compulsion shall not justify or excuse any person taking such oath or engagement, unless he or she shall, within four days after the taking thereof, if not prevented by actual force or sickness, and then within four days after the hinderance produced by such force or sickness shall cease, declare the same, together with the whole of what he or she shall know touching the same, and the person or persons by whom, and in whose presence, and when and where such oath or engagement was administered or taken, by information on oath before one of H. M.'s justices of the peace, or one of H. M.'s principal secretaries of state, or H. M.'s privy council; or, in case the person taking such oath or engagement shall be in actual service in H. M.'s forces by sea or land, then by such information on oath as aforesaid, or by information to his commanding officer.

52 G. 3. c. 104. Stat. 52 *G.* 3. *c.* 104. § 2. contains a similar enactment as to the oaths or engagements within that act, except that the words, "*fourteen* days" are substituted for "*four days.*"

37 G. 3. c. 123. Persons aiding, &c. at taking such oaths, or causing them to be administered, though not present, to be deemed principals.

Stat. 37 *G.* 3. *c.* 123. § 3. enacts, "that persons aiding and assisting at, or present at and consenting to, the administering or taking of any such oath or engagement as aforesaid, and persons causing any such oath or engagement to be administered or taken, though not present at the administering or taking thereof, shall be deemed principal offenders, and shall be tried as such, although the persons or person who actually administered such oath or engagement, if any such there shall be, shall not have been tried or convicted."

What shall be deemed an oath. By § 5. Any engagement or obligation whatsoever in the nature of an oath, and by stat. 52 *G.* 3. *c.* 104. § 6. any engagement or obligation whatsoever in the nature of an oath, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall be deemed an oath within the intent and meaning of those acts, in whatever form or manner the same shall be administered or taken; and whether the same shall be actually administered by any person or persons to any other person or persons, or taken by any person or persons without any administration thereof by any other person or persons.

52 G. 3. c. 104. A similar enactment is contained in stat. 52 *G.* 3. *c.* 104. § 4. with respect to persons aiding and assisting at the administering of any oath or engagement mentioned in that act: and persons causing any such oath or engagement to be administered, though not present at the administering thereof are to be deemed principal offenders, and, on conviction, to be adjudged guilty of felony, and to suffer death without benefit of clergy, although the

person or persons who actually administered the oath or engagement, if any such there shall be, shall not have been tried or convicted.

Both statutes 37 *G*.3. *c*.123. § 4. and 52 *G*.3. *c*.104. § 5. provide that it shall not be necessary in the indictment to set forth the words of such oath or engagement; and that it shall be sufficient to set forth the purport of such oath or engagement, or some material part thereof. 37 G. 3. c. 123. 52 G. 3. c. 104. In indictments it shall be sufficient to set forth the purport of such oaths.

Upon an indictment on stat. 37 *G*.3. the fourth count charged, that the defendants administered to *J. H.* an oath, "intended to bind him not to inform or give evidence against any member of a certain society formed to disturb the public peace, for any act or expression of his or theirs done or made collectively or individually in or out of that or other similar societies, in pursuance of the spirit of that obligation;" and the eighth count stated the oath to be "intended to bind the said *J. H.* not to give evidence against any associate in certain associations and societies of persons formed for seditious purposes;" and the other counts stated the objects of the oath administered, and the objects of the society, differently and more generally, adapted to the several prohibitory parts of the statute. Upon objection taken at the trial to the generality of the statements in the indictment, Lord *Alvanley* C. J. was of opinion, that the act intended that it should be sufficient to allege and prove what the object of the oath and engagement was, without stating any words at all; and that the offence being described in the words of the act, was well described; but that supposing the objection made to the generality of the counts was good, which he did not admit, yet that in the fourth and eighth a material part of the oath or engagement was set forth according to the clause of the act. The point was submitted to the judges, who, without giving any opinion against the other counts, all agreed that at any rate the fourth and eighth counts were good. *Rex* v. *Moors and others. MS. C. C. R.* 6 *East*, 419. *note* (*b*).

Where the party administering the oath held a paper from which the witness supposed he read the oath, parole evidence was admitted without notice to produce the paper. Where the oath was not seditious on the face of it, parole evidence was admitted to shew that "*the brotherhood*" referred to, was a seditious society. *S. C.*

Stats. 37 *G*.3. *c*.123. §6., and 52 *G*.3. *c*. 104. § 7., provide, that offences committed on the high seas, or out of the realm, or in *England*, shall be tried before any court of oyer and terminer, or gaol delivery for any county in *England*, in such manner and form as if such offence had been therein committed; and that offences committed in *Scotland* shall be tried either before the justiciary court at *Edinburgh*, or in any of the circuit courts in that part of the U. K. Place of trial.

It is also provided by stats. 37 *G*.3. *c*. 123. § 7., and 52 *G*.3. *c*.104. § 8., that any person who shall be tried and acquitted, or convicted of any offence against the acts, shall not be liable to be prosecuted again for the same offence or fact as high treason, or misprision of high treason. And further, that nothing in the acts contained, shall be construed to extend to prevent any person guilty of any offence against the acts, and who shall not be tried for the same Persons tried not liable to be tried for the same fact as high treason. But persons offending against these

acts may be tried for high treason, if not tried under the acts.

as an offence against the acts, from being tried for the same as high treason, or misprision of high treason, in such manner as if those acts had not been made.

52 G. 3. c. 104. Persons confessing, before being charged, indemnified.

Stat. 52 *G.*3. *c.*104. § 3. provides, that every person who before he shall be charged with any offence under the said recited act, or this act, in taking any oath or engagement described in the said recited act or this act, shall, within three months after the passing of this act, appear before some justice of the peace or magistrate, and declare the same, and the oath or engagement so taken, and when and where the same was taken, and in what manner, and who shall at the same time take before such justice of the peace or magistrate, the oath of allegiance to H. M., shall be and is hereby indemnified against any prosecution for any offence under the said recited act or this act; and no confession so made by any such person shall be given in evidence against the person making the same in any court, or in any case whatever.

57 G. 3. c. 19. Societies taking unlawful oaths, &c.

By stat. 57 *G.*3. *c.*19. § 25. it is enacted, that all societies or clubs, the members whereof shall be required or admitted to take any oath or engagement which shall be an unlawful engagement within the meaning of stat. 37 *G.*3. *c.*123., or stat. 52 *G.*3. *c.*104., or to take any oath not required or authorised by law; and every society or club, the members whereof or any of them shall take or in any manner bind themselves by any such oath or engagement, on becoming, or in order to become, or in consequence of being a member or members of such society or club; and every society or club, the members or any member whereof shall be required or admitted to take, subscribe or assent to, or shall take, subscribe or assent to any test or declaration not required or authorised by law, in whatever manner or form such taking or assenting shall be performed, whether by words, signs, or otherwise; either on becoming or in order to become, or in consequence of being a member or members of any such society or club; shall be deemed and taken to be unlawful combinations and confederacies, within the meaning of stat. 39 *G.*3. *c.*79., and may be prosecuted, proceeded against, and punished according to the provisions of the said act.

Members guilty of unlawful combination.

§ 26. This statute is not to extend to freemasons' lodges, nor to any declaration approved by two justices, nor to *Quakers' meetings*, nor to meetings or societies for charitable purposes.

With respect to the administering or taking unlawful oaths in *Ireland*, see stat. 50 *G.*3. *c.*102.

Concerning the taking of oaths for qualifying for offices, see title Office.

And concerning the offences of profane cursing and swearing, see title Swearing, Vol. V.

Office.

§. I. *Concerning the Qualifications for Offices in General.*
[5 & 6 Ed.6. c.16. — 25 C.2. c.2. — 1 G.1. st.2. c.13. — 2 G.2. c.31. — 9 G.2. c.26. — 16 G.2. c.30. — 55 G.3. c.184. — 57 G.3. c.92. — 5 G.4. c.79.]

II. *Concerning the Qualifications for Offices in Corporations.*
[13 C.2. st.2. c.1. — 5 G.1. c.6.]

III. *Of buying and selling Offices.*
[12 R.2. c.2. — 4 H.4. c.5. — 5 & 6 Ed.6. c.16. — 49 G.3. c.126. — 53 G.3. c.54.]

§ I. Qualifications for Offices in General.

25 C. 2. c. 2. (The Test Act.) All persons to be admitted into any office *civil or military*, shall take the oaths of allegiance and supremacy.

BY stat. 25 *C.* 2. *c.* 2. § 2. (usually called the *Test Act*), it is enacted, That all and every person or persons that shall be admitted, entered, placed, or taken into any office or offices, civil or military, or shall receive and pay, salary, fee, or wages, by reason of any patent or grant of H. M., or shall have command or place of trust from or under H. M., his heirs or successors, or by his or their authority, or by authority derived from him or them, within this realm of *England*, dominion of *Wales*, or town of *Berwick-upon-Tweed*, or in H. M.'s navy, or in the several islands of *Jersey* and *Guernsey*, or that shall be admitted into any service or employment in H. M.'s or Royal Highness's household or family after the first day of *Easter Term*, 1673, and shall inhabit, be, or reside, when he or they is or are so admitted or placed within the cities of *London* or *Westminster*, or within thirty miles of the same, shall take the several oaths of supremacy and allegiance in H. M.'s high court of *Chancery* or H. M.'s court of *K. B.* in the next term (*a*) after such his or their admittance or admittances into the office or offices, employment or employments aforesaid, between the hours of nine and twelve of the clock in the forenoon, and no other, and that all and every such person or persons to be admitted after the said first day of *Easter Term* as aforesaid, not having taken the said oaths in the said courts aforesaid, shall, at the quarter sessions for that county or place where he or they shall reside, next after such his admittance or admittances into any of the said respective offices or employments aforesaid take the said several and respective oaths as aforesaid; and all and every such person and persons so to be admitted as aforesaid shall also receive the sacrament of the Lord's Supper, according to the usage of the church of *England*, within three months (*b*) after his or their admittance in or receiving their said

(*a*) By stat. 1 *G.* 1. st. 2. *c.* 13. § 2. These oaths were required to be taken *within three* months after admission into any office, &c. but by stat. 9 *G.* 2. *c.*26. § 3. the time for taking the said oaths is extended to *six calendar* months.

(*b*) And also receive the sacrament of the Lord's Supper, according to the usage of the church of England, within six months, by stat. 16 *G.* 2. *c.* 30. § 3.

5 C. 2. c. 2. authority and employment, in some public church, upon some Lord's day commonly called *Sunday*, immediately after divine service and sermon.

Certificate. A § 3. And every of the said persons in the respective court where he takes the said oaths shall first deliver a certificate (A) (*a*) of such his receiving the said sacrament as aforesaid, under the hands of the respective minister and churchwarden, and shall then make proof of the truth thereof by two credible witnesses at the least, upon oath, all which shall be enquired of, and put upon record in the respective courts.

Clergymen. *Any officer civil or military*] This seems evidently not to extend to *ecclesiastical* officers. As if a clergyman be instituted to a benefice, although he must take the oaths as other persons qualifying for offices, yet he is not required to make proof of his having received the sacrament; but if he be admitted into a civil office, as, for instance, the office of a justice of the peace, he must then prove that he hath received the sacrament; for the court in that respect considers him not in his capacity of a clergyman, but merely as a civil officer.

25 C. 2. c. 2. Exceptions. Also, by the words of the statute, the same shall not extend to the office of any *high constable, petty-constable, tythingman, headborough, overseer of the poor, churchwarden, surveyor of the highways*, or any like inferior civil office of *forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands*, or to any like private offices.

2 G. 2. c. 31. &c. All persons admitted into any preferment or place after 1st August 1736, to take the oaths of allegiance, supremacy, and abjuration, within six calendar months after admission. By stats. 25 *C.* 2. *c.* 2. § 1. — 1 *G.* 1. st. 2. *c.* 13. § 2. — 2 *G.* 2. *c.* 31. § 3., 4. and 9 *G.* 2. *c.* 26. § 3. "All and every person and persons that shall be admitted, entered, placed, or taken into any office or offices, civil or military, or shall receive any pay, salary, fee, or wages, by reason of any patent or grant from H. M. or by his authority, or shall have any command or place of trust within that part of *G. B.* called *England*, or in H. M.'s navy, or in the several islands of *Jersey* and *Guernsey*, or that shall be admitted into any service, office, or employment in the household or family of H. M. or Her M., or any of H. M.'s issue, and all ecclesiastical persons, heads or governors, of what denomination soever, and all other members of colleges and halls within either of the universities of *Oxford* or *Cambridge*, that are or shall be of the foundation, or that do or shall enjoy any exhibition, being of, or as soon as they shall attain the age of eighteen years; and all persons teaching or reading to pupils in either of the aforesaid universities or *elsewhere*, and schoolmasters and ushers, and all preachers and teachers of separate congregations, high and chief constables, and every person who shall act as sergeant at law, counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, by practising in any manner as such in any court or courts whatsoever, within that part of *G. B.* called *England*, who shall at any time after the 1st day of *August* 1736, be admitted into, or enter upon, any of the forementioned preferments, benefices, offices, or places, or shall come into any such capacity, or shall take upon him or them any such practice, employment, or business as aforesaid, shall take and subscribe the oaths of alle-

(*a*) This certificate, by stat. 56 *G.* 3. *c.* 184. (schedule part 1.), is required to be upon a five shilling stamp.

giance, supremacy, and abjuration appointed by stat. 1 *G.* 1. st. 2. *c.* 13. in H. M.'s court of *Chancery*, *K.B.C.P.*, or *Exchequer*, or at the general or quarter sessions of the county, city or place where such person shall be or reside, at any time within *six calendar months* after he or they shall be admitted into, or enter upon any such preferment, benefice, office or place, or come into such capacity, or take upon him or them such practice, employment, or business, as aforesaid between the hours of nine and twelve of the clock in the forenoon, and no other, and during the time of taking thereof all proceedings in the said court shall cease: And all and every person or persons, who by stat. 25 *C.* 2. *c.* 2. are required to make and subscribe the declaration against transubstantiation, shall make and subscribe the said declaration at the same places, and at the same times as are limited for taking and subscribing the oaths aforesaid.

1 G. 1. st. 2. c. 13. 9 G 2. c. 26. Transubstantiation. 25 C. 2. c 2. 9 G. 2. c. 26.

By stat. 1 *G.* 1. st. 2. *c.* 13. § 20. this shall not extend to the office of tithingman, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren or game, or of bailiff of any manor or lands, or to any like private offices.

1 G. 1. st. 2. c. 13. Exceptions.

Which exception is the same with that in stat. 25 *C.* 2. save only, that *high constables* and *petty constables*, by name are here omitted. *Petty constables*, nevertheless, seem to be excepted, as holding a *like inferior civil office* with the *tithingman* or *headborough*: but *high constables* are expressly inserted amongst the other officers required to take the oaths; although they are exempted by the former act from being required to produce a certificate of their having received the sacrament, and from subscribing the declaration against transubstantiation.

And by stat. 25 *C.* 2. *c.* 2. § 6. the court shall enrol such persons' names with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpose only; which shall be hung up in some public place of such court during the whole time of its sitting, to be seen without fee.

25 C. 2. c. 2. Enrolling and fee.

By stat. 1 *G.* 1. *st.* 2. *c.* 13. § 9. the clerk of the peace shall have no more than 2*s.* for the entry.

1 G. 1. st. 2. c. 13.

§ 31. But no seaman or soldier, under the degree of a commission or warrant officer, shall pay any fee for taking the oaths.

Seamen and soldiers.

By stat. 25 *C.* 2. *c.* 2. § 4. 5., and 1 *G.* 1. *st.* 2. *c.* 13. § 8., every person making default herein shall be incapable to hold his office; and if he shall execute his office after the said times are expired, he shall, upon conviction, be disabled to sue in any action, or to be guardian, or executor, or administrator, or capable of any legacy or deed or gift, or to bear any office, or vote at an election, for members of parliament, and shall forfeit 500*l.* to him who shall sue for the same.

25 C. 2. c. 2. 1 G. 1. st. 2. c. 13. Penalty of executing the office unqualified.

But by stat. 9 *G.* 2. *c.* 26. § 4. persons beyond the seas shall not be disabled, if they shall qualify within six months after their return.

9 G. 2. c. 26. Exception of persons beyond seas.

Also by stat. 25 *C.* 2. *c.* 2. § 13. no married woman, or person under eighteen years of age, or *non compos mentis*, shall forfeit their office (other than such married woman during the life of her husband only,) if they take the oaths, and do the other things required, within four months respectively after the death of the

25 C. 2. c. 2. Feme covert; Infant; Non compos.

25 C. 2. c. 2. husband, coming to the age of eighteen years, and being of sound mind.

General clause of indemnity. Likewise, by some act in almost every session of parliament, persons who have omitted to qualify themselves in due time are indemnified, provided they qualify within a time in such act limited, and provided judgment hath not been given against them for the penalty incurred by their neglect, and provided their place is not filled up. See *ante*, tit. Indemnity.

1 G. 1. st. 2. c. 13. Persons disqualified may take a new grant. By stat. 1 *G.* 1. *st.* 2. *c.* 13. § 14. any person forfeiting his office may take a new grant thereof, on his taking the oaths, and conforming; provided it be not filled up before.

Persons disqualified in the universities. § 12. In the universities, where persons shall not take the oaths, or shall not produce a certificate thereof, to be registered in their proper college, and others be not elected in their places within 12 months, the king shall appoint and nominate.

Offices of inheritance may be executed by deputy. § 18. Persons refusing the oaths, having any office of inheritance may appoint a deputy, so as such deputy be approved by H. M. under his privy signet. *Note*, the forms of the aforesaid oaths and declarations are inserted in the title Oaths.

57 G. 3. c. 92. By stat. 57 *G.* 3. *c.* 92., intituled, "An act to regulate the administration of oaths in certain cases to officers in H. M.'s land and sea forces," after reciting that by certain acts it was provided, that officers in the navy and army shall take certain oaths, and make and subscribe certain declarations before they shall enter upon the offices to which they may be appointed; and that doubts had arisen whether the provisions of the said acts are in force; it is enacted, that it shall be lawful to and for H. M.'s principal secretaries of state, the lord high admiral of the U. K. of *G. B.* and *Ireland*, or the commissioners for executing the office of lord high admiral aforesaid, the commander in chief of H. M.'s land forces, the master general of the ordnance, and the secretary at war for the time being, respectively, or any other persons thereunto lawfully authorised, to deliver commissions or warrants to any officer or officers in H. M.'s royal navy, land forces or royal marines, without previously requiring such officer or officers to take the said oaths, or make and subscribe the said declarations.

Proviso respecting oaths, &c. to be taken by officers after receiving commissions. § 2. Provided, that nothing herein contained shall extend to any oaths required by any act or acts now in force to be taken, or to any declarations hereby required to be made and subscribed, by such officer or officers as aforesaid, after he or they shall have accepted and received such commissions or warrants as aforesaid.

5 G. 4. c. 79. By stat. 5 *G.* 4. *c.* 79. intituled, *An act to enable certain persons to receive and hold offices in the management, collection, and receipt of the revenue, without taking or subscribing certain oaths and declarations*, and reciting, that "It is expedient that persons holding certain offices or places of trust or profit in the management, collection, or receipt of any of the public revenues, shall be enabled to receive, hold, use and enjoy the same without previously taking, making, or subscribing certain oaths and declarations;" it is enacted, that from and after the passing of this act (17 *June*, 1824,)

All subjects may take and enjoy offices in the revenue herein men- it shall and may be lawful for any person, being H. M.'s subject, to have, hold, take, use, enjoy, and execute any of the offices of commissioner of customs, excise, stamps, or taxes, or any of the offices concerned in the collection, management, or receipt of the

revenues which are subject to the said commissioners or any of the officers concerned in the collection, management, or receipt of the revenues subject to the authority of the postmaster-general in any part of the U. K. of *G. B.* and *Ireland*, without previously taking, making, or subscribing any declaration or any oath, except the oath of allegiance to H. M., his heirs or successors, and the oath for the due performance of the duties of such office or place, prescribed by any act or acts of parliament relating thereto or otherwise; any thing in any act or acts made or passed in the parliament of England, or of *G. B.* or of *Ireland*, or of the said U. K., to the contrary in any wise notwithstanding. 5 G. 4. c. 79. —— tioned without taking the oath of supremacy.

§ II. Qualifications for Offices in Corporations.

By stats. 13 *C.* 2. *st.* 2. *c.* 1., & 5 *G.* 1. *c.* 6. § 1. 2. No person shall be placed, elected, or chosen, in or to any office or place of mayor, alderman, recorder, bailiff, town clerk, common council man or other office of magistracy, place or trust, or other employment, relating to the government of cities, corporations, boroughs, cinque ports and other port towns, who shall not have received the sacrament of the Lord's Supper according to the rites of the church of *England* within one year next before such election; and every person so placed or elected shall take the oaths of allegiance and supremacy at the same time that the oath of office is taken; which shall be administered by those who, by charter or usage, administer the oath of office; and in default of such, by two justices of the corporation, if there be any such; or otherwise by two justices of the county. And in default thereof every such election and placing shall be void. 13 C. 2. st. 2. c. 1. 5 G. 1. c. 6. To receive the sacrament and take the oaths, within one year next before election.

It hath been adjudged to be no excuse, that the oaths were not tendered. 2 *Salk.* 428.

But now by stat. 5 *G.* 1. *c.* 6. 'For quieting and establishing corporations,' it is enacted that all persons in the actual possession of any office that were required by stat. 13 *C.* 2. to take the sacrament within one year next before their election into such office, shall be confirmed in their several offices, and shall be indemnified and discharged from all incapacities and penalties arising from such omission; and that none of their acts shall be questioned by reason of such omission, nor shall any person who shall be hereafter placed or elected in or to any of the offices aforesaid, be removed by the corporation or otherwise prosecuted for or by reason of such omission, nor shall any incapacity, disability, forfeiture or penalty be incurred by reason of the same, unless such person be so removed, or such prosecution be commenced within six months after his election. 5 G. 1. c. 6.

If neither of these events have happened within the time limited, the election becomes absolute and unavoidable; for the statute operates rather as a protection to the possession than as a bar to the remedy. 1 *Blac. Rep.* 229. 2 *Burr.* 1013. 2 *Cowp.* 539.

Yet notwithstanding that the words of stat. 13 *C.* 2. (and also of stat. 25 *C.* 2. before mentioned) are so very strong as to make the officer's election void to all intents and purposes, yet it hath been strongly holden, that the acts of a person under such a disability, being instated in such an office, and executing the same without

any objection to his authority, may be valid as to strangers; for otherwise not only those who no way infringe this law, but even those whose benefit is intended to be advanced by it, might be sufferers for another's fault, to which they are no way privy; and one chasm in a corporation happening through the default of one head officer, would perpetually vacate the acts of all others, whose authority, in respect of their admission into their offices, or otherwise, may depend on his. 1 *Haw.* c. 8. § 3.

Entering the same. Which said justices shall, by 13 *C.* 2. *st.* 2. *c.* 1., cause memoranda to be made of such oaths taken before them, and delivered once a-year to the town clerk, or other register or clerk, who shall enter the same in their books.

General clause of indemnification. And generally there is a clause of indemnification in some act in almost every session of parliament, provided they qualify on or before a time in such act limited. *Vide* stat. 5 *G.* 4. *c.* 6. tit. Indemnity.

§ III. Of buying and selling Offices.

Indictable at common law. The buying and selling of offices of a public nature has been considered as an offence *malum in se*, and indictable at common law. 1 *Russ.* 227.

In *Rex.* v. *Pollman and others*, 2 *Campb.* 229. On an indictment for a conspiracy to obtain money, by procuring from the lords of the treasury the appointment of a person to an office in the customs, it was proposed to argue on behalf of one of the defendants, that the indictment was bad on the face of it, as it was not a misdemeanor at common law to sell or to purchase an office like that of coast waiter. But Lord *Ellenborough* C. J. said that if that were to be made a question, it must be debated on a motion in arrest of judgment, or on a writ of error: but that, after reading the case of *Rex* v. *Vaughan* (4 *Burr.* 2494.) it would be very difficult to argue that the offence charged in the indictment was not a misdemeanor. And *Grose* J., in passing sentence, said that there could be no doubt but that the offence charged was clearly a misdemeanor at common law.

In *Rex* v. *Vaughan*, 4 *Burr.* 2494., a criminal information was granted for offering the Duke of *Grafton*, then first lord of the treasury, the sum of 5000*l.* as a bribe to procure the reversion of the office of clerk of the supreme court of the island of *Jamaica. Vide per* Ld. *Kenyon*, C. J. 2 *East*, 17.

It has been endeavoured to prevent this offence by the enactments of several statutes.

By stat. 12 *R.* 2. *c.* 2. it is enacted, *that the chancellor, treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justices of the one bench and of the other, barons of the exchequer, and all others who shall be called to ordain, name or make justices of the peace, sheriffs, escheators, customers, comptrollers or any other officer or minister of the king, shall be firmly sworn, that they shall not ordain, name nor make any of the above-mentioned officers for any manner of gift or brokage, favour or affection; nor that none who pursueth by himself, or by other, privily or openly, to be in any manner of office, shall be put into the same office, or into any other; but that they*

shall make all such officers and ministers of the best and most lawful men, and sufficient in their knowledge and conscience. See the *Earl* of *Macclesfield's* Trial, 16 *Howell's St. Tri.* 767.

By stat. 4 *Hen.*4. *c.*5. it is enacted, *that no sheriff shall let his bailiwick to farm to any man, for the time that he occupieth such office.* 4 H. 4. c. 5.

But the principal statute relating to this matter is the 5 & 6 *E.*6. *c.*16. § 2. which enacts, *that if any person or persons at any time hereafter bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, or receive, have or take any money, fee, reward or any other profit directly or indirectly, or take any promise, agreement, covenant, bond or any assurance to receive or have any money, fee, reward or other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them; or to the intent that any person should have, exercise or enjoy any office or offices, or the deputation of any office or offices or any part of any of them; which office or offices or any part or parcel of them, shall in anywise touch or concern the administration or execution of justice, or the receipt, controlment or payment of any of the king's highness' treasure, money, rent, revenue, account, aulnage, auditorship or surveying of any of the king's majesty's honours, castles, manors, lands, tenements, woods or hereditaments; or any the king's majesty's customs, or any other administration or necessary attendance to be had, done or executed in any of the king's majesty's custom house or houses; or the keeping of any of the king's majesty's towns, castles or fortresses, being used, occupied or appointed for a place of strength and defence; or which shall concern or touch any clerkship to be occupied in any manner of court of record, wherein justice is to be administered; then all and every such person and persons that shall so bargain or sell any of the said office or offices, deputation or deputations; or that shall take any money, fee, reward or profit, for any of the said office or offices, deputation or deputations of any of the said offices, or any part of any of them; or that shall take any promise, covenant, bond or assurance for any money, reward or profit to be given for any of the said office or offices, deputation or deputations of any of the said offices, or any part of any of them, shall not only lose and forfeit all his and their right, interest and estate which such person or persons shall then have of, in or to any of the said office or offices, &c. &c., but shall also be adjudged disabled persons in the law, to all intents and purposes, to have, occupy or enjoy the said office or offices, &c.* 5 & 6 Ed. 6. c. 16.

§ 3. All such bargains, promises, bonds, &c. shall be void.

§ 4. Provided that the act shall not extend to any office whereof any person is seised of any estate of inheritance.

§ 5. Provided also, that it shall not be prejudicial to the chief justices of the king's bench or the common pleas, or to any of the justices of assize: but that they may do in that behalf touching any office to be given or granted by them as they might have done before.

Office or offices.] The offices of chancellor, registrar, and commissary in the ecclesiastical courts are within the meaning of the statute; inasmuch as those courts not only determine matters that are brought before them *pro salute animæ*, but also have the decision of disputes concerning the lawfulness of matrimony and legitimation of children, which touch the inheritance of the sub-

ject, and also hold plea of legacies and tithes, and grant probates of wills and letters of administration, &c. in which respect they are courts of justice. 12 *Rep.*78. *Cro. Jac.*269. 3 *Inst.*148. 1 *Salk.*468. 3 *Lev.*289. 2 *Vent.*187. 267. *Willes*,571.

So also is the place of cofferer; and the king is bound by this statute. *Co. Lit.* 234. *a.*

So also is that of the surveyor of the customs. 2 *And.* 55. 107.

So also are the offices of clerk of the crown and clerk of the peace, *Macarty* v. *Wickeford*, *Tr.* 9 *G.*2. *B. R.* in error from *Ireland*, though it was also ruled there that the statute did not extend to that case, *Ireland* not being within the statute.

So also (it should seem) is the place of purser of a ship. For though the contrary was decided in 2 *Vern.* 308., the authority of that case was doubted by Lord *Loughborough* in 1 *H. Bl.* 326. and in *Purdy* v. *Stacey*, 5 *Burr.* 2700. Lord *Mansfield*, in delivering the opinion of the court, said, "If the commissioners of the admiralty were to take money for their warrant to appoint a person to be purser, it would be criminal in the corrupter and corrupted."

So also is the place of "Customer of a port." 1 *H. Blac.* 327.

So also are the offices of collector and supervisor of the excise. *Cas. Temp. Talb.* 140. & 3 *P. Wm.*391.

But the sale of a bailiwick of a hundred is *not* within the statute; such an office not concerning the administration of justice, nor being an office of trust. 4 *Leon.* 33.

Nor is a seat in the six clerks' office, that being a ministerial office only. *Sparrow* v. *Reynold*, *P.* 26 *Car.*2. *C. B.*

Nor are commissions in the army, *Pre. Ch.* 199. But the reason why the sale of these commissions is allowed, is, that it takes place under the authority and with the consent of those who have the power of appointment. 1 *H. Blac.*327. & 8 *T. R.* 94.

And with regard to offices under government, it has been decided that they cannot be sold, though they be not such offices as are mentioned in the statute. 8 *T. R.* 94.

But offices not within the statute may be sold, provided the sale takes place with the consent of those who have the power of appointment. 8 *T. R.* 94.

Deputation of any office.] One *Colshill*, being surveyor of the customs, agreed with *Smyth* that the latter should be his deputy, and that in consideration thereof *Smyth* should pay *Colshill* 600*l.* and 100*l.* annually; it was also agreed that *Colshill* should surrender his patent, and procure a new one in the joint names of himself and *Smyth*, and *Smyth* gave the other a bond for the performance of the whole agreement; it was decided that the bond was void as being within the statute, for though that part of it which respected the procuring of a new patent might not be within the act, yet that the other part of the agreement was, and that vitiated the whole. 2 *And.*55.

A bond, given by an officer mentioned in the statute 5 & 6 *Ed.* 6. for securing all the peofits of the office to the person appointing, is void by the statute. *Layng* v. *Paine*, *Willes*,571.

So is a bond given by such an officer to surrender whenever the person appointing chooses. *S. C.*

Where an office is within the statute, and the salary is certain,

if the principal make a deputation, reserving a less sum *out of the salary*, it is good.

So if the profits be uncertain, arising from fees, if the principal make a deputation, reserving a certain sum *out of the fees and profits of the office*, it is good; for in these cases the deputy is not to pay unless the profits amount to so much; and though a deputy is, by his constitution, in the place of his principal, yet he has no right to the fees, they still continue to belong to the principal; so that, as to the principal, it is only reserving a part of his own, and giving away the rest to the deputy. But where the agreement is not to pay out of the profits, *but to pay generally such a sum*, it must be paid at all events, and a bond for such an agreement is void by the statute. 2 *Salk*. 466. 468. 6 *Mod*. 234. *Comb*. 356.

Though in the case of *Bellamy* v. *Burrow*, *Cas. Temp. Talb*. 97. it was adjudged that a trust may be created of an office within the statute, yet that doctrine has since been questioned, if not overruled. 3 *Bro*. 579. 1 *H. Blac*. 322. & 327. *Willes*, 575.

Seized of any estate of inheritance.] The proviso in the statute, that the act shall not extend to any office of which *any person* is seized of any estate of inheritance, means only offices of which *subjects* are seized of estates of inheritance, and does not extend to those of which the king is so seized. *Huggins* v. *Bambridge*, *Willes*, 241.

And therefore it was decided that a contract with the warden of the *Fleet* (who held only for life under the crown) that for a sum of money he should surrender the office to the king, to the intent that he should procure from the king a grant of the office to the purchaser, was void by this statute; though that office has been and may be granted to a subject in fee; and that a bond given to secure the payment of such consideration could not be enforced in a court of law. *S. C.*

Be adjudged disabled persons.] In the construction of this statute, it has been holden, that a person who makes a contract for an office, contrary to the provision of the act, is so far disabled to hold the same, that he cannot at any time during his life be restored to a capacity of holding it by any grant or dispensation whatsoever. *Hob*. 75. *Co. Lit*. 234. *Cro. Car*. 61. *Cro. Jac*. 386.

As the provisions of this statute do not extend to all cases within the mischief which it was intended to prevent, it has become necessary for courts of equity, in many cases, to interpose; for though it be true that penal laws are not to be extended as to penalties and punishments, yet if there be a public mischief, and a court of equity see private contracts made to elude laws enacted for the public good, it ought to interpose, and that upon the public policy of the law.

Upon this principle it was that the court of chancery interfered in the case of *Morris* v. *M'Cullock*, *Amb*. 432. where a person, by means of a lady connected with one of the lords of the admiralty, procured a commission in the marines for a livery servant for 200*l*.

So also in *Law* v. *Law*, *Cas. Temp. Talb*. 140. and 3 *P. Wms*. 391. where a bond was given to a person to influence a commissioner of the excise to appoint to an office under him.

So in *Huncington* v. *Du Chatel*, 1 *Bro.* 124. where Ld. *Rochford*, groom of the stole to H. M., in consideration of two annuities, recommended a page of the presence.

Nor is this relief confined to courts of equity. When cases of a similar nature are brought before the courts of law, they also refuse to give their assistance to enforce the contract, considering the transaction as contrary to public policy.

In the case of *Parsons* v. *Thompson*, 1 *H. Blac.* 322, where the defendant, in consideration that the plaintiff, an officer in the dock-yard at *Chatham*, would procure himself to be superannuated and retire on the usual pension, agreed (without the knowledge of the navy board, to whom the appointment belonged) that in case, he, the defendant, should succeed the plaintiff, to allow him a certain share of the annual profits of the office, it was ruled that no action could be supported in a court of law on such an agreement.

So in *Garforth* v. *Fearon*, 1 *H. Blac.* 327., where the defendant, by the interest and on the application of the plaintiff, was appointed customer of *Carlisle*, having previously signed an agreement, declaring, that his name was only used in the application in trust for the plaintiff, that he would appoint such deputies as the plaintiff should nominate, and would empower the plaintiff to receive the profits of the office to his own use, it was decided, not only that the agreement was void by the stat. 12 *R.* 2., but also that the common law would not support an assumpsit on such an agreement.

Again, in the case of *Blackford* v. *Preston*, 8 *T. R.* 89. it was holden, that a sale (by the owner) of the command of a ship employed in the *East India* company's service, without the knowledge of the company, was illegal; and that the contract of sale could not be the foundation of an action at law.

49 G. 3. c. 126. Provisions of 5 & 6 Ed. 6. c. 16. extended to other offices.

By stat. 49 *G.* 3. *c.* 126. § 1. reciting stat. 5 & 6 *Ed.* 6. *c.* 16., it is declared and enacted, that the said act and all the provisions therein contained shall extend to *Scotland* and *Ireland*, and to all offices in the gift of the crown, or of any office appointed by the crown; and all commissioners, civil, naval, or military, and to all places and employments, and to all deputations to any such offices, commissions, places, or employments, in the respective departments or offices, or under the appointment or superintendance and control of the lord high treasurer or commissioners of the treasury, the secretary of state, the lords commissioners for executing the office of lord high admiral, the master-general and principal officers of his majesty's ordnance, the commander-in-chief, the secretary at war, the paymaster-general of H. M.'s forces, the commissioners for the affairs of *India*, the commissioners of the excise, the treasurer of the navy, the commissioners of the navy, the commissioners for victualling, the commissioners of transports, the commissary general, the storekeeper general, and also the principal officers of any other public department or office of H. M.'s government; and also to all offices, commissions, places, and employments belonging to or under the appointment or control of the *East India* company: and the said act, and this act, and all the clauses and provisions therein respectively contained, shall be construed as one act, as if the same had been herein repeated and re-enacted.

§ 2. Provides, that where the right, &c. of any person shall be forfeited under the said act or this act, the right of such appointment shall immediately vest in H. M.

49 G. 3. c. 126.

When right of appointment forfeited, to go to H. M.

§ 3. If any person shall sell or bargain for the sale of, or receive, have, or take any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, or any promise, agreement, covenant, contract, bond, or assurance, or shall by any way, device or means, contract or agree to receive or have any money, fee, gratuity, loan of money, reward or profit, directly or indirectly; and also if any person or persons shall purchase or bargain for the purchase of, or give or pay any money, fee, gratuity, loan of money, reward or profit, or make or enter into any promise, agreement, covenant, contract, bond or assurance to give or pay any money, fee, gratuity, loan of money, reward or profit, or shall by any way, means or device, contract or agree to give or pay any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, for any office, commission, place or employment specified or described in the said act or this act, or within the meaning of the said act or this act, or for any deputation thereto, or for any part or participation of the profits thereof, or for any appointment thereto or resignation thereof, or for the consent or voice of any person to any such appointment, then every such person, and also he who shall wilfully and knowingly aid, abet or assist such person therein, shall be adjudged guilty of a misdemeanor.

Persons buying or selling offices, or receiving or paying money or rewards for offices, guilty of a misdemeanor.

§ 4. If any person shall receive, have or take any money, fee, reward or profit, directly or indirectly, or take any promise, agreement, covenant, contract, bond or assurance, or by any way, means or device, contract or agree to receive or have any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, for any interest, solicitation, petition, request, recommendation or negociation whatever, made or to be made, or pretended to be made, or under any pretence of making or causing or procuring to be made any interest, &c. in or about or in anywise touching any nomination, appointment or deputation to or resignation of any such office, &c. as aforesaid, or under any pretence for using or having used any interest, &c. in or about any such nomination, &c. or for the obtaining or having obtained the consent or voice of any person as aforesaid to such nomination, &c.; and also if any person shall give or pay or cause or procure to be given or paid any money, fee, gratuity, loan of money, reward or profit, or make or cause or procure to be made any promise, agreement, covenant, contract, bond or assurance, or by any way or device, contract or agree, or give or pay or cause or procure to be given or paid any money, &c. for any solicitation, &c. whatever, that shall in anywise touch any nomination, &c. of any such office, &c. as aforesaid, or for the obtaining or having obtained, directly or indirectly, the consent or voice of any person as aforesaid to any such nomination, &c. and also if any person shall, for or in expectation of gain, fee, &c. solicit, recommend or negociate in any manner for any person in any matter that shall in anywise touch any such nomination, &c. or for the obtaining, directly or indirectly, the consent or voice of any person to any such nomination, &c., every such person, and also every person

Persons receiving or paying money for soliciting offices, and any negociations or pretended negociations relating thereto, guilty of a misdemeanor.

49 G. 3. c. 126.

who shall wilfully and knowingly aid, abet or assist therein, shall be adjudged guilty of a misdemeanor.

Persons opening or advertising houses for transacting business relating to the sale of offices, guilty of a misdemeanor.

§ 5. Whereas on the pretence of negociating or soliciting the sale, transfer or appointment of any office which under the exception of this act or otherwise it may be lawful to sell, offices for negociating the same, and advertisements may be published, under the colour of which illegal transactions intended to be prohibited by this act may be carried on; it is further enacted, that if any person shall open or keep any place for the soliciting, transacting or negociating in any manner whatever any business relating to vacancies in, or the sale or purchase of, or appointment, nomination or deputation to, or resignation, transfer or exchange of any offices, commissions, places or employments whatever in or under any public department, every such person, and every person wilfully and knowingly aiding, abetting or assisting therein, shall be adjudged guilty of a misdemeanor.

Inflicting a penalty on persons advertising or publishing the names of brokers or agents.

§ 6. If any person shall advertise or publish, or cause or procure to be advertised or in any manner published any place to have been or to be opened, set up, or kept for any of the purposes aforesaid, or advertise or publish, or cause or procure, &c. the name of any person as broker or agent or solicitor for any of the purposes aforesaid, or print or cause or procure or permit to be printed or advertised any advertisement or proposal for any of the purposes aforesaid, then such person shall forfeit for every such offence the sum of 50*l.* to be recovered at *Westminster*; and the whole penalty shall go to the person who shall sue for the same, with full costs of suit.

Sale of commissions in the army.

§ 7. Act not to extend to purchase or sale of commissions for the regulated prices, or authorised regimental agents acting in such cases according to regulation, without fee or reward. (*a*)

§ 8. Officers in army giving more than regulated prices, or paying agents for negociating, to forfeit their commissions, and be cashiered; their commissions to be sold, and half of the produce, when not exceeding a certain sum, to go to the informer.

Act not to extend to offices excepted in former act, nor to securities or transactions under legal securities.

§ 9. Nothing in this act shall extend to any office excepted from the provisions of the said act of *Ed.* 6., or to any office which was legally saleable before this act, and in the gift of any person by virtue of any office possessed under any patent or appointment for his life, or to render invalid, or in any manner to affect any promise, &c. entered into before this act, and which before the passing thereof was a valid promise, &c. or to any money paid, or to any act done in pursuance of any such promise, &c.

Nor to lawful deputations.

By § 10. Act not to extend to lawful deputations where payment of principal or deputy is out of the fees.

Nor to annual payments out of the fees of any office, to any person formerly holding such office.

§ 11. This act not to extend to any annual reservation, charge or payment made or required to be made out of the fees, perquisites or profits of any office to any person who shall have held such office, in any commission or appointment of any person succeeding to such office, or to any agreement, &c. made for securing such reservation, &c.; provided always, that the amount of such reservation, &c. and the circumstances under which the

(*a*) Stat. 53 G. 3. c. 54. excepts purchases, &c. of any commissions or appointments in the battle-axe guards in *Ireland*.

same shall have been permitted, shall be stated in the commission, &c. of the person so holding such office, and paying or securing such money. 49 G.3. c.126.

§ 12. Relates to certain offices in *Ireland*.

And § 13. To the manner of punishing offenders in *Scotland*.

By § 14. All offences committed against the provisions of the said act and this act, by any governor, lieutenant-governors or person having the chief command, civil or military, in any of H. M.'s dominions, &c. or their secretaries, shall be enquired of and heard in the court of K. B. at *Westminster* as under stat. 42 *G*.3. *c*.85. Offences committed abroad shall be tried in K. B.

See also stat. 49 *G*.3. *c*.118. § 3.

A. Form of Certificate referred to, *ante*, p. 600.

WE, the minister and churchwarden of the parish and parish church of ——, *in the county of* ——, *do hereby certify that* —— *of* —— *in the said county, esquire, on* Sunday *the* —— *day of* —— 18—, *did receive the sacrament of the Lord's supper in the parish church aforesaid, immediately after divine service and sermon, according to the usage of the church of* England. *In witness whereof we have hereunto subscribed our hands the said* —— *day of* ——, 182 .

J. E. { Minister of the parish and parish church aforesaid.

J. C. { Churchwarden of the said parish and parish church.

A. B. *of* ——, *and* C. D. *of* ——, *do severally make oath that they did see the said* —— *in the above written certificate named, and who now present hath delivered the same into this court, receive the sacrament of the Lord's Supper in the parish church aforesaid. And that they did see the said certificate subscribed by the said minister and churchwarden.*

Sworn in court at —— this —— day of ——, 18—.
G. C.
J. O.
} A. B.
C. D.

Orchards. See **Wood** and **Turnips.**

Ordnance Stores. See **Cordage for Shipping.**

Overseers of the Poor. See **Poor.**

Outlawry. See **Process.**

Pamphlets. See **Newspapers.**

Paper. See **Excise.**

Papists. See **Popery.**

Pardon.

[27 Ed. 3. c. 2. — 13 R. 2. st. 2. c. 1. — 5 W. c. 13. — 12 & 13 W. c. 2. — 20 G. 2. c. 52. — 37 G. 3. c. 140. — 58 G. 3. c. 29.]

Pardon, what.

A PARDON is a work of mercy, whereby the king, either before the attainder, sentence or conviction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt or duty, temporal or ecclesiastical. 3 *Inst.* 233.

The power of pardoning offences is inseparably incident to, and is the most amiable prerogative of, the crown: and this high prerogative the king is entrusted with upon a special confidence, that he will spare those only whose case (could it have been foreseen) the law itself may be presumed willing to have been excepted out of its general rules; which the wisdom of man cannot possibly make so perfect as to suit every particular case, 1 *Show.* 284.

General pardon.

Pardons are either *general* or *special: general*, are by act of parliament; of which, if they are without exceptions, the court must take notice *ex officio:* but if there are exceptions therein, the party must aver that he is none of the persons excepted. 3 *Inst.* 233. *Hale's Sum.* 252.

20 G. 2. c. 52.

By stat. 20 *G.* 2. *c.* 52. for the king's general pardon; all persons are pardoned and discharged from certain crimes committed prior to *June* 15, 1647; with certain exemptions in the said act mentioned.

And the like for the most part hath been enacted by former statutes of general pardon; together also with the exceptions of several persons by name.

Special pardon.

Special pardons, are either *of course*, as to persons convicted of manslaughter, or *se defendendo*, and by divers statutes to those who shall discover their accomplices in several felonies; or of *grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they must be pleaded. 3 *Inst.* 233.

27 Ed. 3. c. 2. Pardon to contain the suggestion.

By stat. 27 *Ed.* 3. *c.* 2. In every charter of the pardon of felony, the suggestion and the name of him that maketh the suggestion shall be comprised; and if it be found untrue, the charter shall be disallowed.

For wherever it may reasonably be presumed that the king was deceived, the pardon is void. Therefore, any suppression of truth or suggestion of falsehood in a charter of pardon will vitiate the whole. 2 *Haw.* c. 37. § 12. 3 *Inst.* 238.

13 R. 2. st. 2. c. 1. Pardon to specify the offence, if murder, treason, or rape.

And by stat. 13 *R.* 2. *st.* 2. *c.* 1. No charter of pardon shall be allowed for murder, treason or rape, unless the offence be specified therein.

Lord *Coke* says, the intention of this act was not, that the king should grant a pardon of murder by express name in the charter, but because the whole parliament conceived that he would never pardon murder by special name. And he says, he hath never

seen any pardon of murder by any king of *England*, by express name. 2 *Inst.* 233—236.

It was however determined in the court of K. B. that the king may pardon on an indictment for murder, as well as a subject may discharge an appeal. 1 *Salk.* 499. See Vol. I. p. 113.

The king cannot pardon an offence before it be committed; but such pardon is void. 2 *Haw. c.* 37. § 28.

The king cannot pardon an offence before it is committed.

Cannot pardon a nuisance.

And in some cases, even where the king is sole party, some things there are which he cannot pardon; as for example, for all common nuisances, as for not repairing bridges or highways, the suit (for avoiding multiplicity of suits) is given to the king only for redress and reformation thereof; but the king cannot pardon or discharge either the nuisance, or the suit for the same; because such pardon would take away the only means of compelling a redress of it. But it hath been holden by some, that a pardon of such offence will save the party from any fine for the time precedent to the pardon. 3 *Inst.* 237. 2 *Haw. c.* 37. § 33.

But may remit the fine.

And surely, a fine being a mulct to the king, and not a forfeiture to the party grieved, may be by the king remitted.

12 & 13 W. 3. c. 2.

In case of an impeachment.

By the act of settlement, 12 & 13 *W. c.* 2., no pardon, under the great seal of *England*, shall be pleadable to an impeachment by the Commons in parliament. But it seems after the impeachment solemnly heard and determined, the royal grace is not farther restrained or abridged; for that to pardon delinquents convicted on impeachment is as ancient as the constitution. 4 *Blac. Com.* 400. *n.* 2.

But in the case of an impeachment, after the lords have delivered their sentence of guilty, the commons can pardon the party by declining to demand judgment against him; for no judgment can be pronounced by the lords, till it be demanded by the commons. 4 *Blac. Com.* 400. *n.* 2.

Cannot discharge a recognisance.

Thus also, if one be bound by recognisance to the king to keep the peace against another by name, and generally all other lieges of the king; in this case, before the peace be broken, the king cannot pardon or release the recognisance, although it may be made only to him, because it is for the benefit and safety of his subjects. 1 *Inst.* 238.

Cannot release an information qui tam.

Likewise, after an action popular is brought *as well for the king as for the informer*, according to any statute, the king can but discharge his own part, and cannot discharge the informer's part; because by bringing the action the informer hath an interest therein: but before the action brought, the king may discharge the whole, (unless it be provided to the contrary by the act,) because the informer cannot bring an action or information originally for his part only, but must pursue the statute. And if the action be given to the *party grieved*, the king cannot discharge the same. 3 *Inst.* 231.

May discharge suit in the spiritual court.

It seems to have been always agreed that the king's pardon will discharge any suit in the spiritual court *ex officio*. Also it seems to be settled at this day, that it will discharge any suit in such court at the instance of the party, for the reformation of manners, or welfare of the soul, as for defamation, or laying violent hands on a clerk, and such like; for such suits are in truth the suits of the king, though prosecuted by the party. Also it seems to be agreed that if the time to which such pardon hath

relation be prior to the award of costs to the party, it shall discharge them. And it seems to be the general tenor of the books, that though it be subsequent to the award of the costs, yet if it be prior to the taxation of them, it shall discharge them; because nothing appears in certain to be due for costs before they are taxed. 1 *Haw. c.* 37. § 41.

But it seems agreed that a pardon shall not discharge a suit in the spiritual court any more than in the temporal, for a matter of interest or property in the plaintiff; as for tithes, legacies, matrimonial contracts, and such like. *Id.* § 42.

Doth not by releasing a man release his partner.

If the king release to a man all debts, this shall not discharge his co-debtor; but otherwise it is in case of a subject, for in that case the release to one discharges both. 3 *Inst.* 239.

5 W. 3. c. 13. Person pardoned may be bound to good behaviour.

By stat. 5 *W.* 3. *c.* 13. When a pardon is pleaded by any one for felony, the justices may at their discretion remand him to prison till he enter into recognisance, with two sureties, for his good behaviour, for any time not exceeding seven years.

Pardon doth not restore lands or goods forfeited.

It seems to be a settled rule that no pardon by the king, without express words of restitution, shall divest either from the king or subject an interest either in lands or goods vested in them by an attainder or conviction precedent: yet it seems agreed, that a pardon prior to a conviction shall prevent any forfeiture either of lands or goods. 2 *Haw. c.* 35. § 54.

Doth not restore the corruption of blood.

A pardon after the attainder doth not restore the corruption of blood; for this cannot be restored but by act of parliament. 3 *Inst.* 233.

But as to issue born after the pardon, it hath the effect of the restitution of blood. 1 *Hale*, 358.

Doth restore the credit.

It seems to be settled at this day that the pardon of treason or felony, even after a conviction or attainder, doth so far clear the party from the infamy and all other consequences of his crime, that he may not only have an action for a scandal in calling him traitor or felon after the time of the pardon, but may also be a good witness, notwithstanding the attainder or conviction; because the pardon makes him, as it were, a new man, and gives him a new capacity and credit. 2 *Haw. c.* 37. § 48.

How in cases of perjury.

But it seems to be the better opinion that the pardon of a conviction of *perjury* doth not so restore the party to his credit as to make him a good witness; because it would be an injury to the people in general to make them subject to such a person's testimony. 1 *Vent.* 349.

At common law or by statute.

Touching a pardon for perjury, this difference is to be taken; that where a party is convict upon the statute, it is part of the judgment to be disabled; but at common law, it is only a consequential disability; therefore in the latter case the king may pardon, and that restores the party to his testimony; otherwise in the former, for in that case he must reverse the judgment, or cannot be restored. *R.* v. *Greepe*, 2 *Salk.* 574.

A pardon must be under the great seal. Lord *Warwick's case*, 13 *Howell's St. Tri.* 1015. A warrant under the privy seal, or sign manual, though it may be a sufficient authority to admit the party to bail, in order to plead the king's pardon when obtained in proper form, yet it is not of itself a complete irrevocable pardon. *Gully's case*, 1 *Leach*, 98.

By stat. 58 *G.* 3. *c.* 29. (for regulating the payment of fees for

pardons under the great seal.) It is enacted that no fee, gratuity, or other dues, paid or payable for or in respect of any grant of a pardon by H. M., his heirs and successors, or for or in respect of any letters patent, charter, warrant, bill, docket or other instrument appertaining thereto, or the transcript of any such instrument, shall be paid or payable by or on behalf of the person or persons in whose favour or to whom such pardon shall be granted; but that all fees which are now paid and payable for the granting and passing of any such pardon or pardons, shall be paid by the lords commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, in the same manner and by the same persons as other law expences on behalf of H. M. are paid. **58 G. 3. c. 29. Fees for pardons to be paid by the treasury.**

§ 2. Enacts, that from and after the passing of this act, no such letters patent, charter, warrant, bill, docket, instrument or transcript as aforesaid, shall be subject to or liable to be charged with any stamp duty or duties whatever. **and the instrument to be exempt from stamp duties.**

By stat. 37 *G.* 3. *c.* 140. § 1. If H. M. shall be pleased to extend his mercy to any offender, liable to the punishment of death, by the sentence of a naval court-martial, upon condition of transportation, or of transporting himself beyond seas, or on condition of being imprisoned within any gaol in *G. B.*, or on condition of being kept to hard labour in any gaol, or house of correction, or penitentiary house, or on any river; it shall be lawful for any justice of *K. B.*, *C. B.*, or baron of the exchequer, of the degree of the coif, upon such intention of mercy as aforesaid, being notified in writing by one of H. M.'s principal secretaries of state, to allow to such offender the benefit of such conditional pardon as shall be expressed in such notification, in the same manner as if a conditional pardon had passed for that purpose under the great seal. And if the condition be of transportation, or of transporting himself, such justice or baron shall make order, as he might in cases under stat. 24 *G.* 3. st. 2. *c.* 56. If the condition be of imprisonment, or being kept to hard labour, the pardon shall be allowed as aforesaid, and such justice or baron shall order imprisonment or hard labour, according to the notification of pardon from such secretary, as he might do by the 19 *G.* 3. *c.* 74. **37 G. 3. c. 140. Of pardon to persons sentenced to death by a naval court-martial.**

By § 2. The justice or baron who shall allow such pardon, and make such order under such notification, shall direct the notification and his own order to be filed in the office of the clerk of the crown of the court of *K. B.* **The pardon, &c. to be filed in K. B.**

By § 4. The said clerk of the crown shall upon the application of any such offender who shall accept H. M.'s pardon, or of any other person applying on his behalf, or on application of any person on the behalf of H. M., deliver a certificate in writing under his hand, containing an account of the christian name and surname of such offender, of his offence, of the place where the court was held, before whom he was convicted, and of the terms and conditions on which pardon was given him, which certificate shall be sufficient proof of the conviction and sentence of such offender, and also of the terms on which such pardon was granted, in any court, and in any proceeding in which it may be necessary to enquire into the same. **A certificate from the clerk of the crown office, K. B. to be proof of the pardon.**

Parish Registers.

[52 G.3. c.146. 4 G.4. c.76.]

52 G. 3. c.146.

BY stat. 52 *G*.3. *c*.146. after reciting that "whereas the amending the manner and form of keeping and of preserving registers of baptisms, marriages and burials of H. M.'s subjects in the several parishes and places in *England*, will greatly facilitate the proof of pedigrees of persons claiming to be entitled to real or personal estates, and be otherwise of great public benefit and advantage;" it is enacted, that from and after the 31st of *December*, 1812, registers of public and private baptisms, marriages (*a*) and burials, solemnized according to the rites of the united church of *England* and *Ireland*, within all parishes or chapelries in *England*, whether subject to the ordinary, or peculiar, or other jurisdiction, shall be made and kept by the rector, vicar, curate or officiating minister of every parish (or of any chapelry where the ceremonies of baptism, marriage and burial have been usually and may according to law be performed) for the time being, in books of parchment, or of good and durable paper, to be provided by H. M.'s printer as occasion may require, at the expence of the

Officiating ministers to keep registers of public and private baptisms, of marriages and of burials.

Parishes to provide suitable books for that purpose.

Marriages to be in the presence of two witnesses, and to be registered:

(*a*) And now by stat. 4 *G*.4. *c*.76. § 28. "in order to preserve the evidence of *marriages*, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof," it is enacted, "that from and after the first day of *November*, (1824,) all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration of every marriage an entry thereof shall be made in the register book provided and kept for that purpose as by law is now directed, or as shall be hereafter directed; in which entry or register it shall be expressed that the said marriage was celebrated by banns or licence, and if both or either of the parties married by licence be under age, not being a widower or widow, with consent of the parents or guardians, as the case shall be; and such entry shall be signed by the minister with his proper addition, and also by the parties married, and attested by such two witnesses; which entry shall be made in the form or to the effect following; that is to say," (*see the form*, post, p. 624.), and by § 29. "if any person shall, from and after the said 1st day of *November*, with intent to elude the force of this act, knowingly and wilfully insert or cause to be inserted in the register book of such parish or chapelry as aforesaid any false entry of any matter or thing relating to any marriage; or falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or act or assist in falsely making, altering, forging, or counterfeiting any such entry in such register; or falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or assist in falsely making, altering, forging, or counterfeiting any such licence of marriage as aforesaid; or utter or publish as true any such false, altered, forged, or counterfeited register as aforesaid, or a copy thereof, or any such false, altered, forged, or counterfeited licence of marriage, knowing such register or licence of marriage respectively to be false, altered, forged, or counterfeited; or if any person shall, from and after the said 1st *November*, wilfully destroy or cause or procure to be destroyed any register book of marriages, or any part of such register book, with intent to avoid any marriage, or to subject any person to any of the penalties of this act; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and shall suffer the punishment of transportation for life, according to the laws in force for the transportation of felons"

and signed, &c.

making a false entry,

or of forging, &c. any such entry;

or of forging, &c. any licence;

or of destroying such register;

to be transported.

respective parishes or chapelries; whereon shall be printed, upon each side of every leaf, the heads of information herein required to be entered in the registers of baptisms, marriages, and burials respectively, and every such entry shall be numbered progressively from the beginning to the end of each book, the first entry to be distinguished by number one; and every such entry shall be divided from the entry next following by a printed line according to the forms contained in the schedule (A.) (B.) (C.) hereto annexed; and every page of every such book shall be numbered with progressive numbers, the first page being marked with the number 1. in the middle of the upper part of such page, and every subsequent page being marked in like manner with progressive numbers, from number 1. to the end of the book. 52 G. 3. c. 146.

§ 2. And, for better ensuring the regularity and uniformity of such register books, a printed copy of this act, together with one book so prepared as aforesaid, and adapted to the form of the register of baptisms prescribed in the schedule (A.) to this act annexed; and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of marriages in the schedule (B.) to this act annexed; and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of burials in the schedule (C.) to this act annexed, shall be provided and transmitted by H. M.'s printer to the officiating ministers of the several parishes and chapelries in *England* respectively, who are hereby required to use and apply the same in and to the purposes of this act; and such books respectively shall be proportioned to the population of the several parishes and chapelries, according to the last returns of such population made under the authority of parliament; and other books of like form and quality shall for the like purposes be furnished from time to time by the churchwardens or chapelwardens of every parish or chapelry, at the expence of the said parish or chapelry, whenever they shall be required by the rector, vicar, curate or officiating minister to provide the same; and all such books shall be of paper, unless required to be of parchment by such churchwardens or chapelwardens respectively.

King's printer to transmit to each parish a printed copy of this act, and register books adapted to the forms herein prescribed.

§ 3. Such registers shall be kept in such separate books aforesaid, and every such rector, vicar, curate or officiating minister shall as soon as possible after the solemnization of every baptism, whether private or public, or burial respectively, record and enter in a fair and legible hand-writing, in the proper register book to be provided, made and kept as aforesaid, the several particulars described in the several schedules herein-before mentioned, and sign the same; and in no case, unless prevented by sickness, or other unavoidable impediment, later than within seven days after the ceremony of any such baptism or burial shall have taken place.

Registers to be in separate register-books.

§ 4. Whenever the ceremony of baptism or burial shall be performed in any other place than the parish church or church yard of any parish (or the chapel or chapel yard of any chapelry, providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister or curate of such parish or chapelry, the minister who shall perform such ceremony of baptism or burial shall, on the same or on the next day, transmit to the rector, vicar or other minister of

Certificate of baptism or burial when performed in any other place than the parish church or church yard, to be according to schedule (D.):

52 G.3. c.146.

and the entry of such baptism or burial to be distinguished accordingly.

such parish or chapelry, or his curate, a certificate of such baptism or burial in the form contained in the schedule (D.) to this act annexed; and the rector, vicar, minister or curate of such parish or chapelry, shall thereupon enter such baptism or burial according to such certificate in the book kept pursuant to this act for such purpose; and shall add to such entry the following words, "according to the certificate of the reverend transmitted to me on the day of ."

An entry in the register of the christening of a child is not of itself evidence of the age.

Wihen v. *Law*, *Sitt. after T. Term*, 1821. 3 *Stark. R.* 63. The question was as to the age of the defendant: on the part of the defendant to prove his infancy at a particular time, the register of his christening was produced, from which it appeared that he was christened in 1807; but the entry also stated that he was born in 1799. *Bayley* J., was of opinion, that the entry relating to the time of his birth, was not evidence of that fact; it did not appear upon whose information the entry had been made, and the clergyman who made the entry had no authority to make enquiry concerning the time of birth, or to make any entry concerning it in the register. Verdict for plaintiff. On motion for new trial, *Marryat* argued, that at all events the entry was evidence to confirm the statement of the mother, who had been examined as a witness for the defendant at the trial. But *per Cur.* the entry was not evidence to prove the age of the party: it was nothing more than something told to the clergyman at the time of the christening, concerning which he had not power by law to make an entry in the register. He had neither the authority nor the means of making an entry. If it had appeared that the entry had been made by the direction of the mother (*a*), it might perhaps, if required, have been read in evidence for the purpose of confirming her testimony, but even then it would have amounted to nothing more than a mere declaration by her as to the age of her son, made at a time when there was no motive on her part to misrepresent his age.—R. R.

Register books to be kept in custody of the officiating minister, in an iron chest, which is to be provided at the expense of the parish.

§ 5. The several books wherein such entries shall respectively be made, and all register-books heretofore in use, shall be deemed to belong to every such parish or chapelry respectively, and shall be kept by, and remain in the power and custody of the rector, vicar, curate or other officiating minister of each respective parish or chapelry as aforesaid, and shall be by him safely and securely kept in a dry well-painted iron chest, to be provided and repaired as occasion may require, at the expense of the parish or chapelry, and which said chest containing the said books shall be constantly kept locked in some dry, safe and secure place within the usual place of residence of such rector, vicar, curate or other officiating minister (if resident within the parish or chapelry), or in the parish church or chapel; and the said books shall not, nor shall any of them be taken or removed from or out of the said chest, at any time or for any cause whatever, except for the purpose of making such entries therein as aforesaid, or for the inspection of persons desirous to make search therein, or to obtain copies from or out of the same, or to be produced as evidence in some court of law or equity, or to be inspected as to the state and con-

(*a*) See *May* v. *May*, *Stra.* 1072. *Phill. on Ev.* 6 *Ed.* 397. *Herbert* v. *Tuckall*, *T. Raym.* 84. cited in *Brune* v. *Rawlins*, 7 *East.*

dition thereof, or for some of the purposes of this act; and immediately after making such respective entries, or producing the said books respectively for the purposes aforesaid, the said books shall forthwith again be safely and securely deposited in the said chest. 52 G.3. c. 146.

§ 6. At the expiration of two months after the 31st of *December*, 1812, and at the expiration of two months after the end of every subsequent year, fair copies of all the entries of the several baptisms, marriages and burials, which shall have been solemnized, or shall have taken place within the year preceding, shall be made by the rector, vicar, curate or other resident or officiating minister (or by the churchwardens, chapelwardens, clerk, or other person duly appointed for the purpose under and by the direction of such rector, vicar, curate or other resident or officiating minister,) on parchment, in the same form as prescribed in the schedules hereunto annexed (to be provided by the respective parishes); and the contents of such copies shall be verified and signed in the form following, by the rector, vicar, curate or officiating minister of the parish or chapelry to which such respective register-book shall appertain:—

Annual copies of registers to be made; and to be verified by the officiating minister.

I A. B. *rector*, [or, as the case may be] *of the parish of* C. [or, *of the chapelry of* D.] *in the county of* E., *do hereby solemnly declare, that the several writings hereto annexed, purporting to be copies of the several entries contained in the several register-books of baptisms, marriages and burials, of the parish or chapelry aforesaid, from the ——— day of ——— to the ——— day of* ———, *are true copies of all the several entries in the said several register-books respectively from the said ——— day of ——— to the said ——— day of ———; and that no other entry during such period is contained in any of such books respectively,* † *are truly made according to the best of my knowledge and belief.*

Signed A. B.

† *Sic.*

Which declaration shall be fairly written, without any stamp, on the said copy immediately after the last entry therein; and the signature to such declaration shall be attested by the churchwardens or chapelwardens, or one of them, of the parish or chapelry to which such register-books shall belong.

§ 7. Copies of the said register-books, verified and attested as aforesaid, shall, whether such parish or chapelry shall be subject to the ordinary, peculiar or other jurisdiction, be transmitted by such churchwardens or chapelwardens, after they, or one of them, shall have signed the same, by the post, to the registrars of each diocese in *England*, within which the church or chapel shall be situated, on or before the 1st of *June*, 1814, and on or before the 1st day of *June* in every subsequent year.

Annual copies of register-books to be transmitted to the registrars of each diocese by the church-warden.

§ 8. The registrar of every diocese in *England* shall, on or before the 1st of *July*, 1814, and on or before the 1st of *July* in every subsequent year, make a report to the bishop of such diocese, whether the copies of the registers of the baptisms, marriages and burials, in the several parishes and places within such diocese, have been sent to such registrar, in the manner and within the time herein required; and in the event of any failure of the transmission of the copies of the registers as herein required, by the churchwardens and chapelwardens of any parish or chapelry

Registrars to make reports to bishops, whether the said copies have been sent in.

52 G.3. c. 146. in *England*, the registrar shall state the default of the parish or chapelry specially in his report to the bishop.

In case of neglect or refusal of officiating minister to verify copies of the register-books, churchwardens to certify the default.

§ 9. In case the rector, vicar or other officiating minister or curate of any parish or chapelry shall neglect or refuse to verify and sign such copies of such several register books, and such declaration as aforesaid, so that the churchwardens or chapelwardens shall not be able to transmit the same, as required by this act, such churchwardens or chapelwardens shall, within the time required by this act for the transmission thereof, certify such default to the registrar of the diocese within which such parish or chapelry shall be, who shall specially state the same in his report to the bishop of such diocese.

In places where there is no church or chapel, a memorandum of every baptism or burial may be delivered to the officiating minister of some adjoining parish.

§ 10. And, for the obtaining of returns and registers of baptisms and burials in extra-parochial places in *England*, where there is no church or chapel, it is enacted, that in all cases of the baptism of any child, or the burial of any person in any extra-parochial place in *England*, according to the rites of the established church, where there is no church or chapel, it shall be lawful for the officiating minister, within one month after such baptism or burial, to deliver to the rector, vicar or curate of such parish immediately adjoining to the place in which such baptism or burial shall take place, as the ordinary shall direct, a memorandum of such baptism or burial, signed by such parent of the child baptised, or a memorandum of such burial, signed by the person employed about the same, together with two of the persons attending the same, according as the nature of the case may respectively require; and every such memorandum respectively shall contain all such particulars as are herein-before required; and every such memorandum delivered to the rector, vicar, or curate of any such adjoining parish or chapelry, shall be entered in the register of his parish, and form a part thereof.

Letters and packets containing annual copies of register books to go free of postage.

§ 11. The superscription upon all letters and packets containing the copies of such parish or other registers, to be transmitted by the post to the several offices of the said registrars as aforesaid, shall be indorsed and signed by the churchwardens or chapelwardens of every respective parish and chapelry in *England*, in the form contained in schedule (E.); and all such letters and packets shall be carried and conveyed by means of H. M.'s post office to, and be delivered at the offices of the said registrars, without postage or other charge being paid or payable for the same.

Annual copies of register-books when transmitted to registrars, to be safely kept from damage, and alphabetical lists to be made.

§ 12. When and so often as the copies of the said register books of baptisms, marriages and burials as aforesaid, and also the said lists of births, baptisms, marriages or burials as aforesaid, shall be transmitted to the office of the said registrars respectively as aforesaid pursuant to the directions herein-before contained for that purpose, the said registrars shall respectively cause all the said books and lists to be safely and securely deposited, kept, and preserved from damage or destruction by fire or otherwise, and to be carefully arranged for the purpose of being resorted to as occasion may require; and the said registrars respectively shall also cause correct alphabetical lists to be made and kept in books suitable to the purpose, of the names of all persons and places mentioned in such books and lists as shall have been transmitted to the said registrars respectively; which alphabetical lists and

books, and also the copies of registers and lists so transmitted to the said registrars as aforesaid, shall be open to public search at all reasonable times on payment of the usual fees. 52 G. 3. c. 146.

§ 13. And whereas in many dioceses the places wherein the copies of the parochial registers of baptisms, marriages, and burials, as well as the original wills proved within the same respectively are kept, are insufficient for their being preserved with due care; for which a remedy should be applied in those dioceses where it shall be found necessary; it is enacted, that in order to a due examination thereof, the bishop, together with the custodes rotulorum of the several counties within each diocese, and the chancellor thereof, shall before the 1st of *February*, 1813, cause a careful survey to be made of the several places in which the parochial registers, and the wills proved within the diocese, are kept; and shall make a report to H. M.'s most honourable privy council, of the state of the same, on or before the 1st day of *March* following, setting forth in each case whether the buildings are in all respects fit and proper for the preservation of papers of the above description, as well with respect to space as to security from fire, and to protection from damp, and if not, at what probable expense they can be made so; and where the instruments and papers before mentioned are kept in dwelling-houses or other places, which cannot be made fit and secure for the due preservation thereof, then and in such case the persons before named shall enquire and report in like manner at what expense proper buildings may be provided, and in what places, so as to have one place within each diocese for the due preservation of all such registers and wills; together with their opinion upon the most suitable mode of remunerating the officers employed in each registry, for their additional trouble and expense in carrying the provisions of this act into execution.

Report to the privy council on or before 1st March 1813, respecting proper places for the preservation of copies of register books, as well as original wills in each diocese; and for remuneration of registrars' officers.

§ 14. If any person shall knowingly and wilfully insert, or cause, or permit to be inserted in any such register book of such baptisms, burials or marriages as aforesaid, or in any such copy of any such register so directed to be transmitted to the registrars as aforesaid, or in any such lists or declarations also directed to be transmitted to such registrars as aforesaid, any false entry of any matter or thing relating to any baptism, burial or marriage, or shall falsely make, alter, forge or counterfeit, or cause or procure, or wilfully permit, to be falsely made, altered, forged or counterfeited any part of any such register, list or declaration, or of any such copy of any such register; or shall wilfully destroy, deface or injure, or cause or procure, or permit to be destroyed, defaced or injured, any such register book, or any part thereof; or shall knowingly and wilfully sign or certify any copy of any such register hereby required to be transmitted as aforesaid, which shall be false in any part thereof, knowing the same to be false; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of felony, and shall be transported for the term of fourteen years.

Any person making false entries, or false copies of entries, or altering or destroying register book, to be adjudged guilty of felony, and transported for fourteen years.

§ 15. No rector, vicar, curate or officiating minister of any parish or chapel, who shall discover any error to have been committed in the form or substance of the entry in the register book of any such baptism, burial or marriage, respectively by him solemnised, shall be liable to all or any of the penalties herein

But not to affect persons committing accidental errors, if duly and timely cor-

52 G. 3. c. 146.

rected according to the truth of the case.

mentioned, if he shall within one calendar month after the discovery of such error, in the presence of the parent or parents of the child whose baptism may have been entered in such register, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens, (who shall respectively attest the same), alter and correct the entry which shall have been found erroneous, according to the truth of the case, by entry in the margin of the book wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made: provided also, that in the fair copy of the registers respectively which shall be transmitted to the registrars of the dioceses, the said rector, vicar, curate or officiating ministers shall certify the alterations so made by him as aforesaid.

Fees heretofore payable not to be altered by this act.

§ 16. Nothing in this act contained shall in any manner diminish or increase the fees heretofore payable or of right due to any minister for the performance of any of the before-mentioned duties, or to any minister or registrar, for giving copies of such registrations, but that all due, legal and accustomed fees on such occasions, and all powers and remedies for recovery thereof, shall be and remain as though this act had not been made.

Annual copy of register-books not subject to stamp duty.

§ 17. No duplicate or copy of any register of baptism, marriage or burial, made under the directions and for the purposes of this act, shall be chargeable with any stamp duty thereon; any act now in force to the contrary thereof in anywise notwithstanding.

Application of penalties.

§ 18. One half of the amount of all fines or penalties to be levied in pursuance of this act, shall go to the person who shall inform or sue for the same; and the remainder of such fines as shall be imposed on any churchwarden or chapelwarden shall go to the poor of the parish or place for which such churchwarden or chapelwarden shall serve; and the remainder of such fines as shall be imposed on any rector, vicar, minister or curate, or registrar, shall be paid and applied to such charitable purposes, in the county within which the parish or place shall be, as shall be directed by the bishop of the diocese.

Lists of all extant register-books to be transmitted by the officiating minister to the registrar before 1st June, 1813.

§ 19. The rector, vicar, curate, or officiating minister of every parish and chapelry in *England*, whether subject to the ordinary, peculiar or other jurisdiction, shall transmit to the registrar of the diocese in which the parish or chapelry shall be situated, before the first day of *June* one thousand eight hundred and thirteen, a list of all registers which now are in such parish or chapelry respectively, stating the periods at which they respectively commence and terminate, the periods (if any) for which they are deficient, and the places where they are deposited.

Provisions of this act to extend to churches and chapels not parochial.

§ 20. All the provisions in this act shall extend, so far as circumstances will permit, to cathedral and collegiate churches, and chapels of colleges or hospitals, and the burying grounds belonging thereto: and to the ministers who shall officiate in such cathedral or collegiate churches, and chapels of colleges or hospitals, and burying grounds respectively, and shall baptize, marry or bury any person or persons, although such cathedral or collegiate churches or chapels of colleges or hospitals, or the burying

grounds belonging thereto, may not be parochial, or the ministers officiating therein may not be, as such, parochial ministers, and there shall be no churchwarden or churchwardens thereof; and in all such cases, the books herein-before directed to be provided, shall be provided at the expence of the body having right to appoint the officiating minister in every such cathedral or collegiate church or chapel of a college or hospital; and copies thereof shall be transmitted to the registrar of the diocese within which such cathedral or collegiate church or chapel of a college or hospital shall be, by the officiating minister of such church, in like manner as is herein directed with respect to parochial ministers, and shall be attested by two of the officers of such church, college or hospital, as the copies of parochial registers are herein directed to be attested by churchwardens: provided always, that nothing in this act contained shall extend to repeal any provision contained in an act passed in the twenty-sixth year of the reign of his late majesty king *George* the second, intituled *An act for better preventing clandestine marriages.* 52 G. 3. c. 146. Not to repeal any provision of the marriage act, 26 G. 2. c. 33.

Schedules to which this Act refers.

Schedule (A).

1.

BAPTISMS solemnised in the parish of *St. A.* in the county of *B.* in the year one thousand eight hundred and .

When Baptised.	Child's Christian Name.	Parents' Name.		Abode.	Quality, Trade, or Profession.	By whom the Ceremony was performed.
		Christian.	Surname.			
18—. 1st February No. 1.	John Son of	William Elizabeth		Lambeth		
3d March No. 2.	Ann Daughter of	Henry Martha		Fulham		

Schedule (B.)

1.

MARRIAGES solemnised in the parish of *St. A.* in the county of *B.*, in the year one thousand eight hundred and———.

[*Note*, the following form of entry of *Marriages* appears substituted by stat. 4 *G.* 4. *c.* 76. § 28., for that provided by stat. 52 G. 3. *c.* 146. sched. (B.), see *ante*, p. 616. n. (*a*).]

A. B. *of* { the / this } *Parish, and* C. D. *of* { the / this } *Parish, were married in this* { *Church* / *Chapel* } *by* { *Banns,* / *Licence,* } *with Consent of* { Parents, / Guardians, } *this* *day of* *in the year* .

By me, J. J. { Rector. / Vicar. / Curate.

This marriage was solemnized between us { A. B. / C. D.

In the presence of { E. F. / G. H.

Schedule (C.)

1.

BURIALS in the parish of *A.* in the county of *B.*, in the year one thousand eight hundred and ———.

Name.	Abode.	When Buried.	Age.	By whom the Ceremony was performed.
John Wilson No.	Duke Street, Westminster.	1813, 1st May.	62.	

Schedule (D.)

I ——— *do hereby certify, that I did on the* ——— *day of* ———, *baptize, according to the rites of the United Church of* England *and* Ireland, ———, *son* [*or* daughter] *of* ——— *and* ——— *his wife, by the name of* ———.

To the rector (*or,* as the case may be] *of* ———.

I ——— *do hereby certify, that on the* ——— *day of* ———, A. B. *of* ——— *aged* ——— *was buried in* [stating the place of burial], *and that the ceremony of burial was performed according to the rites of the United Church of* England *and* Ireland, *by me,* ———,

To the rector [or, as the case may be] *of* ———.

Schedule (E.)

To the Registrar of the Diocese of ——— at ———.
A. B. / *C. D.* } Churchwardens (*or* Chapelwardens,) of the Parish (*or* Chapelry) of ———. [*or such other description as the case shall require.*]

Parliament.

§ I. *Matters previous to the Election.*

[7 & 8 W.3. c.25.—18 G.2. c.18.—19 G.2. c.28.—25 G.3. c.84.—33 G.3. c.64.—53 G.3. c.89.]

II. *Election to be free.*

[3 Ed.1. c.5.—1 W.3. sess.2. c.2.—5 W.3. c.20.—12 & 13 W.3. c.10.—9 An. c.10.—9 An. c.11.—8 G.2. c.30.]

III. *Qualification of the Candidates.*

[30 C.2. st.2. c.1.—7 & 8 W.3. c.25.—6 An. c.7.—9 An. c.5.—1 G.1. st.2. c.56.—33 G.2. c.20.—22 G.3. c.45.—25 G.3. c.52.—41 G.3. (U.K.) c.52.—c.63.—c.101.—52 G.3. c.144.—59 G.3. c.37.]

IV. *Qualification of the Electors.*

[8 H.6. c.7.—10 H.6. c.2.—7 & 8 W.3. c.4.—7 & 8 W.3. c.25.—6 An. c.23.—10 An. c.23.—2 G.2. c.24.—18 G.2. c.18.—19 G.2. c.28.—3 G.3. c.15.—c.24.—20 G.3. c.17.—22 G.3. c.41.—25 G.3. c.84.—26 G.3. c.100.—30 G.3. c.35.—42 G.3. c.116.—51 G.3. c.84.—c.99.—53 G.3. c.123.]

V. *Polling.*

[2 G.2. c.24.—25 G.3. c.84.—34 G.3. c.73.—42 G.3. c.62.—43 G.3. c.74.]

VI. *Return; and Expences of Election.*

[7 H. 4. c. 15.—7 & 8 W. 3. c. 7.—c. 25.—10 An. c. 23.—10 G. 3. c. 16.—11 G. 3. c. 42.—14 G. 3. c. 15.—25 G. 3. c. 84.—28 G. 3. c. 52.—32 G. 3. c 1.—36 G. 3. c. 59.—42 G. 3. c. 84.—47 G. 3. c. 1.—53 G. 3. c. 71.]

VII. *Privilege of Parliament.*

[12 & 13 W. c. 3.—11 G. 2. c. 24.—4 G, 3. c. 33.—10 G. 3. c. 50.—45 G. 3. c. 124.—52 G. 3. c, 144.]

VIII. *How long the Parliament shall continue.*

[1 G. 1. st. 2. c. 38.—7 & 8 W. 3. c. 15.—6 An. c. 7.]

IX. *When an Act of Parliament shall take Date.*

[33 G. 3. c. 13.—48 G. 3. c. 106.]

X. *Improperly procuring an Election.*

[49 G. 3. c. 118.]

§ I. Matters previous to the Election.

53 G. 3. c. 89. directs the course in which election writs shall be forwarded by the messenger of the great seal, and through the post office.

STAT. 53 *G.* 3. *c.* 89. *For the more regular conveyance of writs for the election of members to serve in parliament,* enacts, § 1., that the messenger, or pursuivant of the great seal, shall, after the receipt of such writs, forthwith carry such of them as shall be directed to the sheriffs of *London* or *Middlesex*, to the respective officers of such sheriffs, and all such other writs to the general post-office in *London*, and there deliver them to the post-master general or his deputy, who shall give an acknowledgment in writing, expressing therein the time of delivery, and shall keep a duplicate of such acknowledgement, signed by the parties respectively to whom and by whom the same shall be so delivered; and that the post-master or his deputy shall dispatch all such writs free of postage by the first post or mail after the receipt thereof, under covers directed to the proper officers to whom the said writs shall be respectively directed, accompanied with proper directions to the post-master or deputy post-master of the place, or nearest to the place where such officers shall hold their office, requiring such post-master or deputy forthwith to carry such writs respectively to such office, and to deliver them there to the officers to whom they shall be respectively directed, or their deputies, who are required to give to such post-master or deputy a memorandum in writing, acknowledging the receipt of every such writ, and setting forth the day and the hour the same was delivered by such post-master or deputy, which memorandum shall also be signed by such post-master or deputy, who are required to transmit the same by the first or second post afterwards to the post-master general or his deputy, at the general post-office in *London*, who are required to make an entry thereof in a proper book for that purpose, and to file the memorandum along with the duplicate

of the said acknowledgment, signed by the messenger, to the intent that the same may be inspected or produced upon all proper occasions, by any person interested in such elections. 53 G.3. c.89.

The statute, after directing (§ 2. & 3.) that all persons to whom the writs for the election of members to parliament ought to be and are usually directed shall, within a month, send to the postmasters general an account of the places where they shall hold their offices, and so from time to time, as often as such places shall be changed, and of the post town nearest to such offices; or in case any such office shall be in *London*, *Westminster*, or *Southwark*, or within five miles thereof, shall send such account to the messenger of the great seal; proceeds to enact, (§ 4. & 5.) that after the death of the then messenger of the great seal, the allowances of *mileage* shall cease, except an allowance of two guineas on each writ for the election of a member on any vacancy, and of 50*l.* on the calling of a new parliament. And it further enacts, that whereas the messenger of the great seal and his deputy have, from time to time, received certain other fees for the conveyance and upon the delivery of these writs, such fees shall cease from the passing of the act; and that neither the messenger nor his deputy, nor any other person, shall receive or take any fee, reward, or gratuity whatsoever, for the conveyance or delivery of any such writ.

Persons to whom such writs are usually directed, must give an account of the places of their offices.

Mileage and other fees abolished, except two guineas on a vacancy, and 50l. on a new parliament.

And § 5. further proceeds to give to the then messenger an annual allowance for his life of 520*l.* in compensation for these fees.

§ 6. Enacts, that every person concerned in the transmitting or delivery of any such writ as aforesaid, who shall wilfully neglect or delay to deliver or transmit any such writ, or accept any fee, or do any other matter or thing in violation of this act, shall be guilty of a misdemeanor, and may, upon conviction upon any indictment or information in H. M.'s court of king's bench, be fined and imprisoned, at the discretion of the court, for such misdemeanor.

Persons acting in violation of the act guilty of a misdemeanor.

§ 7. Offences committed in *Scotland* may be punished by a fine or imprisonment, as the judge before whom the offender shall be tried and convicted may direct.

By stat. 7 & 8 *W*. 3. *c*. 25. § 1. When any new parliament shall be summoned, there shall be forty days between the teste and return of the writ; and, as well upon the calling of any new parliament as upon a vacancy in parliament time, the writ shall be delivered to the proper officer to whom the execution thereof doth belong, and to no other person: And every such officer, upon receipt of the writ, shall indorse thereon the day that he received it, and shall forthwith make out a precept, and within three days after the receipt of the writ, shall deliver such precept to the proper officer of the place where any member is wanting, and to no other person, and such officer, upon the back of such precept, shall indorse the day of his receipt thereof in the presence of the party from whom he received the same, and shall forthwith cause public notice to be given of the time and place of election, and shall proceed to election thereupon within eight days next after his receipt of such precept, and give four days' notice at least of the day appointed for the election.

7 & 8 W. 3. c. 25.

Time of proceeding to the election in counties.

33 G.3. c.64. Notice of time and place of elections to be given within certain hours.

By stat. 33 *G.* 3. *c.*64. § 1. All notices of the time and place of any election shall be publicly given at the usual place or places within the hours of eight in the forenoon and four in the afternoon from 25th *October* to 25th *March*, and of eight in the forenoon and six in the afternoon from 25th *March* to 25th *October* inclusive; and no notice shall be deemed or taken to be a good or valid notice for any purpose, or to any effect whatsoever, which shall not be made and published in the manner and within the time of the day aforesaid. (*a*)

25 G.3. c.84.

And by stat. 25 G.3. *c.*84. § 4. upon an election of a knight of the shire, the sheriff shall, within two days after the receipt of the writ, cause proclamation to be made at the place where the ensuing election ought by law to be holden of a special county court to be there holden for the purpose of such election only, on any day, *Sunday* excepted, not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth day; and shall proceed in such election, at such special county court, in the same manner, as if the said election were to be held at a county court, or an adjournment thereof, according to the laws now in being.

§ 4. Provided, that the usual county court for all other purposes, or any adjournment thereof, may be held and proceeded in by the sheriff, in the same manner, and at the same times and places, as if the writ for the election of a knight of the shire had not been received.

7 & 8 W.3. c.25. Clerks for taking the poll.

By stat. 7 & 8 *W.*3. *c.*25. § 3. In every election of any knight of the shire, the sheriff shall appoint such number of clerks as he shall think fit for taking the poll in the presence of himself or deputy.

Inspectors.

And by the same statute the sheriffs shall admit one person for each candidate to be inspector of the clerks.

18 G.2. c.18. Booths to be erected.

If a contest be expected and there are several candidates, the sheriff may, by 18 *G.* 2. *c.*18. § 7., erect, at the expence of the candidates, such number of booths for taking the poll as the candidates or any of them shall, three days at least before the commencement of the poll, desire; not exceeding the number of hundreds or other like division, and not exceeding fifteen in the whole; and shall affix, on the most public part of each, the name of the hundred for which such booth is designed.

And shall make out a list for each booth of the several towns, parishes, and hamlets, wholly or in part, within such hundred; and shall on request deliver a copy to any of the candidates, paying for the same 2*s.* *Ibid.*

And shall appoint clerks at each booth to take the poll; who shall be paid by the candidates, not exceeding each one guinea a-day. *Ibid.*

Cheque book.

§ 9. And the sheriff shall allow a cheque book for every poll book, for each candidate; to be kept by their inspectors, at every place where the poll shall be taken.

7 & 8 W.3. c.25. In cities, boroughs, and towns corporate.

By stat. 7 & 8 *W.* 3. *c.*25. § 1. With respect to cities, boroughs, and towns corporate, the sheriff or other officer who received the writ shall forthwith make out a precept to each borough, town corporate, or place within his jurisdiction where any members are to be

(*a*) If this statute be not observed, the election is void. — *Simeon, Add.* xvii.

elected, and within three days, (and in the Cinque Ports within six days, 10 & 11 *W. c.*7.) after receipt of the said writ, shall by himself or proper agent deliver the precept to the proper officer of such borough, town corporate, or place within his jurisdiction, to whom the execution of such precept doth belong, and to no other person whatsoever: And every such officer shall indorse the day of his receipt thereof in presence of the party of whom he received the same, and shall forthwith cause public notice to be given of the time and place of election, and shall proceed to the election within eight days after receipt of the precept, and give four days' notice at least of the day appointed for the election.

7 & 8 W. 3. c. 25.
10 & 11 W. 3. c. 7.
Cinque ports.

By stat. 19 *G.* 2. *c.*28. § 6, 7. In a city or town, being a county of itself, the sheriff shall forthwith, on receipt of the writ, give public notice of the time and place of election, and proceed to election thereupon within eight days next after the receipt of the writ, and give three days' notice thereof at least exclusive of the day of receipt of the writ and of the day of election, And the sheriff shall allow a cheque book for every poll book for each candidate, to be kept by their inspectors at the place of taking the poll.

19 G. 2. c. 28.
In cities or towns being counties of themselves.

§ II. Election to be free.

By stat. 3 *Ed.* 1. *c.*5. Because elections ought to be free, the king commandeth, upon great forfeiture, that no man by force of arms, nor by malice or menacing, shall disturb any to make free election.

3 Ed. 1. c. 5.
Elections to be free.

By the declaration of rights, 1 *W.* 3. *sess.* 2. *c.* 2. it is insisted, that elections of members of parliament ought to be free; and that freedom of speech, and debates of proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

1 W. 3. sess. 2. c. 2.

And by stat. 8 *G.* 2. *c.*30. on notice of an election the secretary at war shall send orders for the removal of soldiers one day at least before the election, and not to return till after the poll shall be closed. But this not to extend to the guards, nor to any castle or fortified place, where a garrison is usually kept; nor to any officer or soldier having right to vote at such election. See 1 *Peckw.* 89.

8 G. 2. c. 30.
Soldiers to be removed.

By stat. 9 *An. c.*10. § 44. No officer of the *post office* shall by word, message, or writing, or in any other manner endeavour to persuade any elector to give, or dissuade any elector from giving his vote in any election. — By stat. 5 *W.* 3. *c.*20. and 9 *An. c.* 11. § 49. there is the like provision with respect to the officers of *excise*. —— And the like by stat. 12 & 13 *W.* 3. *c.* 10. with respect to the officers of the *customs*.

9 An. c. 10.
Officers of the post-office, &c. not to interfere.

§ III. Qualification of Candidates.

By stat. 7 & 8 *W.* 3. *c.* 25. § 8. No person under the age of twenty-one years shall be capable of being elected.

7 & 8 W. 3. c. 25.
Age.

By stat. 41 G. 3. (U. K.) *c.*63. § 1, 2. No person ordained a priest or deacon, or being a minister of the church of *Scotland*, shall be capable of being elected a member of the house of commons; but the election of such person shall be void.

41 G. 3. (U. K.) c. 63.
Clergymen disabled.

41 G.3. U. K. c.63. § 2. If any person after his election shall be ordained a priest or deacon, or such minister as aforesaid, he shall vacate his seat.

Penalty on sitting or voting. § 3. If such person shall, in either of the two cases aforesaid, presume to sit or vote as a member of such house, he shall forfeit for each day he shall so sit or vote 500*l.* to any person who shall sue for the same in any of H. M.'s courts at *Westminster;* and such penalty shall be recovered with full costs, by action of debt, bill, plaint or information: and every person against whom such forfeiture shall be recovered shall be from thenceforth incapable of taking, holding, or enjoying any benefice, living, or promotion ecclesiastical, or any office of honour or profit under the crown.

Proof of vocation. § 4. And proof of the celebration of divine service, according to the rites of the church of *England* or *Scotland,* in any church or chapel consecrated or set apart for public worship, shall be deemed *primâ facie* evidence of the fact of such person having been ordained a priest or deacon, or minister of the church of *Scotland,* within the meaning of this act.

Limitation of action. § 3. But no person shall be liable to any such forfeiture, unless the prosecution be commenced within twelve calendar months after such forfeiture shall be incurred.

30 C.2. st.2. c.1. Papist. By stat. 30 C.2. stat.2. c. 1. No papist shall sit in either house of parliament.

Placemen. Sir *William Blackstone* says, No person concerned in the management of any duties or taxes created since 1692, except the commissioners of the treasury, nor any of the officers following, (viz. commissioners of prizes, transport, sick and wounded, wine licences, navy, and victualling; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations and their deputies; officers of Minorca or Gibraltar; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretaries of state, salt, stamps, appeals, wine licences, hackney coaches, hawkers and pedlars), nor any persons that hold any new office under the crown created since 1705, are capable of being elected or sitting as members. 1 *Blac. Com.* 175.

6 An. c.7. Accepting of office of profit while a member, election void, but may be again elected. By stat. 6 *An. c.* 7. § 26. If any person, being chosen a member of the house of commons, shall accept of any office of profit from the crown during such time as he shall continue a member, his election shall be, and is hereby declared to be void, and a new writ shall issue for a new election, as if such person so accepting was naturally dead. Provided nevertheless, that such person shall be capable of being again elected as if his place had not become void as aforesaid.

22 G.3. c.45. Contractors. By stat. 22 *G.* 3. *c.* 45. § 1. All persons holding contracts made with the commissioners of the treasury, navy, victualling office, or board of ordnance, for or on account of the public service, shall, during the time they shall hold such contracts, be incapable of being elected or of sitting or voting in the house of commons.

Army clothier. An army clothier, who contracts with a colonel of a regiment or his agents to furnish clothing for such regiment, is not within stat. 22 *G.* 3. *c.* 45., which renders all persons holding contracts for the public service, incapable of being elected or sitting in the

house of commons. — *Thomson*, q. t. v. *Pearse, Esq. M.P. E.* 59. *G.* 3. 3 *Moore, C.P.* 260.

By stat. 6 *Ann. c.* 7. § 25. No person having a pension from the crown during pleasure, shall be capable of being elected. 6 Ann. c.7. Pensioners.

Neither shall any person having a pension from the crown for any term of years, either in his own name or in the name of any other in trust for him, be capable of being elected. 1 G.1. st. 2. c.56.

By stat. 41 *G.* 3. (U. K.) *c.* 52. § 4, 5. Persons who shall hold any of the following places in *Ireland* shall be disabled to sit in the commons house of the parliament of the U. K. under similar penalties as incurred under former *British* or *Irish* acts, or if disabled by this act, to forfeit 500*l. per diem;* viz. commissioners of customs, excise, or stamps, or persons any ways concerned in farming, collecting, or managing any part of the reveuue (except the commissioners of the treasury and their secretary;) commissioners of appeals or of accounts, army agents, contractors, (except members of trading companies, as such;) clerks of the treasury, (except the secretary), or of the auditor's letters, or chancellor of the exchequer, (except the chancellor's secretary); or of the commissioners of the stamps, or of appeals; and all persons who in any future parliament shall hold new places under the lord lieutenant. 41 G.3. (U.K.) c.52. Irish placemen &c.

§ 8. Provided, that nothing herein shall extend to offices held for life or during good behaviour; except such as concern the revenue.

§ 9. But if any person chosen a member shall accept any office of profit from the crown, or by the appointment or subject to the approbation of the lord lieutenant, his seat shall become vacant; provided nevertheless, that (if there be no other incapacity) he shall be again eligible.

By stat. 9 *Ann. c.* 5. § 1. No person shall be capable to sit or vote in the house of commons for a county, unless he hath an estate freehold or copyhold, for his life, or some greater estate of the clear yearly value of 600*l.*; nor for a city or borough, unless he hath a like estate of 300*l.* 9 Ann. c.5. Qualification by estate.

§ 5. And any other candidate or two electors may, upon reasonable request to him made (at the time of the election, or before the day prefixed for the meeting of parliament,) require him to take the following oath:—

I A. B. *do swear, that I truly and* bonâ fide *have such an estate in law or equity, to and for my own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, of the annual value of ——— above reprises, as doth qualify me to be elected and returned to serve as a member for the ——— of ———, according to the tenor and true meaning of the act of parliament in that behalf; and that my said lands, tenements, or hereditaments are lying or being within the parish, township, or precinct of or in the several parishes, townships, or precincts of ——— in the county of ———, or in the several counties of ———,* (as the case shall be.) Oath of qualification.

The same to be administered by the returning officer or two justices; who shall, in three months, certify the same into the chan-

9 Ann. c.5. cery or king's bench, under a penalty of 100*l.*; half to the king, and half to the informer.

Exceptions. § 2. Provided that nothing in the act shall extend to make the eldest son or heir apparent of any peer or lord of parliament, or of any person qualified by this act to serve as knight of a shire, uncapable of being elected and returned, and sitting and voting as a member of the house of commons in any parliament.

33 G. 2. c.20. Qualification to be delivered in at the table of the house of commons. By stat. 33 *G.* 2. *c.*20. Every member, before he shall vote in the house of commons, or sit there during any debate, shall, after the speaker is chosen, deliver in at the table in the middle of the house, whilst the house is there sitting, with the speaker in the chair, an account signed by such member, containing the name of the place where his qualification lies, declaring the same to be of the annual value of 600*l.* above reprises, if a knight of a shire; and of 300*l.* if a citizen, burgess, or baron of the cinque ports; and shall also at the same time take and subscribe the oath following:—

Oath to be there taken. I A. B. *do swear, that I truly and* bonâ fide *have such an estate in law or equity, and of such value, to and for my own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, as doth qualify me to be elected and returned to serve as a member for the place I am returned for, according to the tenor and true meaning of the acts of parliament in that behalf; and that such lands, tenements, or hereditaments, do lie as described in the paper or account signed by me, and now delivered to the clerk of the house of commons. So help me God.*

Exceptions. But this also shall not extend to the eldest son or heir apparent of a peer, or of any person qualified to serve as a knight of a shire, or to the members of either of the universities.

41 G.3. (U.K.) c.101. By stat. 41 *G.* 3. (U. K.) *c.*101. § 23. the 33 *G.* 2. *c.*20. is extended to members elected to the united parliament for *England, Wales, Berwick-upon-Tweed,* or *Ireland.* And the qualifications may be situate in either of those respective parts of the united kingdom.

59 G.3. c.37. By stat. 59 *G.* 3. *c.*37. after reciting stats. 9 *Ann. c.*5., 33 *G.* 2. *c.*20., and 41 *G.* 3. *c.*101., it is enacted, that it shall be sufficient that such lands, tenements, or hereditaments, whereby any person who shall be elected a member of the house of commons in the U. K. shall make out his qualification in manner by the said acts, shall lie either within *England, Wales, Berwick-upon-Tweed, Scotland,* or *Ireland.*

25 G.3. c.52. Commissioners of accounts. By stat. 25 *G.* 3. *c.*52. § 25. The commissioners for auditing the public accounts shall be incapable of sitting in the house of commons.

52 G.3. c. 144. Member becoming a bankrupt. By stat. 52 *G.* 3. *c.*144. § 1. Wherever a commission of bankruptcy shall be awarded against any member of the house of commons, and he shall be found and declared a bankrupt under the same, he is incapacitated for the next twelve calendar months from sitting or voting in the house, unless within that period the commission shall be superseded, or the creditors proving their debts shall be paid or satisfied the full amount of their debts under the commission: the same clause having a proviso, that such debts, (if any) as shall be disputed by the bankrupt, (if he shall, within

the same time, enter into security according to the directions of the act, to pay such money as shall be recovered against him in law or equity, together with the costs,) shall be considered, for the purposes of the act, as paid or satisfied. 52 G.3. c.144

By § 2. If the commission shall not within twelve calendar months be superseded, nor the debts so satisfied, then the commissioners are required, immediately after the expiration of twelve calendar months from the issuing of the commission, to certify the same to the speaker, and thereupon the election of such member is to be void, and the speaker is authorised and required, during any recess forthwith, after receiving such certificate, to cause notice thereof to be inserted in the *London Gazette*, and then, upon the expiration of fourteen days, to issue his warrant to the clerk of the crown to make out a new writ in the room of such member; but nothing herein shall empower the speaker to issue such warrant, unless such certificate shall have been delivered to him so long before the next meeting of the house for the dispatch of business, as that the writ may be issued before that time.

§ IV. Qualifications of the Electors.

By stat. 7 & 8 *W.* 3. *c.*25. § 8. No person shall be admitted to vote under the age of 21 years. 7 & 8 W.3. c.25. Age.

By stat. 6 *Ann. c.*23. § 13. Every elector, before he is admitted to vote, shall, if required, take the oath of abjuration. 6 Ann. c.23. Papist.

By stat. 22 *G.* 3. *c.*41. No person employed in managing the duties of excise, customs, stamp duties, salt, houses and windows, or revenue of the post-office, shall be capable of voting for a member to serve in parliament; and if he shall presume to vote during the time that he shall hold such office, or within 12 calendar months after he shall have ceased to hold the same, his vote shall be void, and he shall forfeit 100*l.* 22 G.3. c.41. Persons employed in the revenue.

By stat. 51 *G.* 3. *c.*84. nothing in the 22 *G.* 3. *c.*41. shall extend to the coal meters or corn meters of the city of *London* to render such coal meters or corn meters incapable of giving their votes for members to serve in parliament as other persons having a right of voting may do, provided such coal meters and corn meters shall not receive or be entitled to receive any salary, fee, or reward, payable out of the revenue of customs, or other public revenues of the crown. 51 G 3. c.84. Not to extend to coal meters or corn meters of the city of London.

By stat. 8 *H.* 6. *c.* 7. every elector of a knight of the shire shall have land or tenement to the annual value of 40*s.* at the least, above all charges. The sheriff shall have power to examine upon oath every such chooser how much he may expend by the year. And by stat. 10 *H.* 6. *c.*2. the said 40*s.* a-year shall be freehold. 8 H.6. c.7. Freehold of 40s. a-year.

And by stat. 18 *G.* 2. *c.* 18. § 5. No person shall vote for a knight of the shire, without having freehold estate in the county of the clear yearly value of 40*s.* over and above all rents and charges payable out of the same. 18 G.2. c.18.

§ 6. But taxes and assessments shall not be deemed a charge payable out of the lands.

§ 5. No person shall vote for any estate which was granted to him fraudulently, on purpose to qualify him to give his vote. Fraudulent conveyance.

By stat. 10 *Ann. c.* 23. § 1. All such conveyances fraudulently made to qualify any person to vote, subject to conditions to 10 Ann. c.23.

10 Ann. c.23. defeat the same, shall be deemed and taken as absolute against the person executing the same, and discharged of all trusts, conditions, and other defeasances; and all bonds, covenants, or other securities for the defeating or reconveying the same shall be void.

7 & 8 W.3. c.25. Splitting votes. By stat. 7 & 3 *W.* 3. *c.* 25. § 7. All conveyances to multiply voices, or to split and divide the interest in lands and houses among several persons, to enable them to vote, shall be void: and no more than one voice shall be admitted for one and the same house or tenement. *See* 2 *Peckw.* 23. 55.

None to vote more than once. By stat. 18 *G.* 2. *c.* 18. § 5. No person shall vote in any election more than once.

Mortgage or trust estate. By stat. 7 & 8 *W.* 3. *c.* 25. § 7. The mortgagor or *cestuique trust* shall vote; and not the trustee or mortgagee, unless he be in actual possession, or receipt of rents and profits.

20 G.3. c.17. Tenant in dower. By stat. 20 *G.* 3. *c.* 17. § 12. Husbands of women entitled to dower out of the estates of their former husbands may vote in respect thereof, although the said dower hath not been set out by metes and bonds; provided that the dower be worth 40*s.* a-year, and the husband be in actual receipt of the profits thereof.

18 G.2. c.18. Possession for twelve months. By stat. 18 *G.* 2. *c.* 18. § 5. No person shall vote for a knight of the shire, without having been in the actual possession of the estate for which he votes, or in the receipt of the rents or profits thereof for his own use above twelve calendar months; unless the same came to him by descent, marriage, marriage-settlement, devise, or promotion to a benefice or office.

20 G.3. c.17. To be charged to the land-tax. By stat. 20 *G.* 3. *c.* 17. § 1. No person shall vote for a knight of the shire in respect of any messuages, lands, or tenements, which have not for six calendar months next before such election been assessed to the land tax in his own name, or in the name of his tenant occupying the same. But by § 2. this shall not extend to an-

Fee farm rents, &c. nuities or fee farm rents (duly registered) issuing out of the premises, nor to any person who became entitled to the premises as aforesaid within twelve calendar months next before such election, but such person shall be entitled to vote, if the premises have been assessed within two years next before in the name of the respective owner or occupier.

42 G.3. c.116. Persons entitled to vote at elections for lands whereon the land-tax hath been redeemed may vote without shewing that the same have been assessed to the land tax. By stat. 42 *G.* 3. *c.* 116. § 200. And whereas doubts may arise by reason of the provisions of an act, passed in the nineteenth year of the reign of his late majesty king *George* the second, intituled, *An act for better regulating of elections of members to serve in parliament for such cities and towns in that part of* G. B. *called* England, *as are counties of themselves;* and of another act passed in the 20th year of the reign of his present majesty, intituled *An act to remove certain difficulties relative to voters at county elections*, as to the right of voting for the election of knights of the shire, or other members to serve in parliament, by persons who may claim so to vote in respect of messuages, lands, or tenements, the land tax charged whereon may have been redeemed; it is enacted, that every person who shall tender his vote at the election of any knight or knights of the shire, or other member or members, to serve in parliament within that part of *G. B.* called *England*, or the principality of *Wales*, in respect of any messuages, lands, or tenements, of the quality and value which would by law entitle him to vote at such election, the land-tax charged whereon shall

have been redeemed or purchased, shall, from and after the passing of this act be entitled to vote at any such election as aforesaid, without being compelled to shew that such messuages, lands, or tenements, have been assessed to the land tax, upon proving to the satisfaction of the returning officer, on oath or otherwise, that such land tax hath at any time previously to such election been redeemed or purchased, and the said messuages, lands, or tenements, become exonerated therefrom under the provisions of the acts for the redemption of land tax, or of this act, the acts 19 *G.* 2. *c.* 28. and 20 *G.* 3. *c.* 17., or any other act or law to the contrary notwithstanding. 42 G.3. c.116.

By § 120. Proof of the execution of any deed by the commissioners, parties thereto, shall be sufficient evidence that every thing required was duly done.

By § 165. Copies of the registers of contracts shall be good evidence of such contracts.

And by stat. 53 *G.* 3. *c.* 123. § 36. The like evidence applies to registers of certificates; and no certificate, or any copy of the register thereof, to be liable to any stamp.

And by stat. 20 *G.* 3. *c.* 17. § 19. the commissioners of the land tax, at their meetings for appointing assessors, shall cause to be delivered to each assessor a printed form of an assessment, according to which they shall make their assessments; which shall be in this manner:— 20 G.3. c.17.

Form of assessment.

County of N., to wit. For the parish of —— in the said county.	An assessment made in pursuance of an act of parliament, passed in the —— year of his majesty's reign, for granting an aid to his majesty by a land tax to be raised in *Great Britain* for the service of the year ——.

Names of proprietors.	Names of occupiers.	Sums assessed.
A. B. ——————	Himself. ———	— — —
A. B. ——————	C. D. ———	— — —
E. F. ——————	C. D. ———	— — —
C. D. ——————	G. H. ———	— — —
J. K. and L. M. ———	N. O. ———	— — —
P. Q. ——————	R. S. ———	— — —
	and T. U. ———	— — —

Signed this ——— day of ——, 18 —. By us, A. B. / C. D. } Assessors.

By stat. 51 *G.* 3. *c.* 99. § 1. reciting that by stat. 42 *G.* 3. *c.* 116. § 154. purchasers of land-tax charged upon manors, messuages, lands, tenements and hereditaments, are by virtue of that act, adjudged, deemed and taken to be in the actual seisin and possession of yearly rents or sums, as fee-farm rents, equal in amount to the land-tax so purchased by them, to be issuing and payable out of the manors, messuages, lands, tenements and hereditaments whereon the land-tax so purchased was charged: and that no person is allowed by law to vote for electing any member of parliament, in respect of any annuity, fee-farm rent or rent charge, 51 G.3. c.99.

51 G.3. c.99. without the same being first duly registered in manner directed by law; and that doubts had arisen whether any person could vote at an election for a member of parliament in respect of any land tax so purchased as aforesaid, without the same or some memorial of the contract or certificate for such purchase being first registered in the same manner as other fee-farm rents, rent charges, and annuities or memorials of the grant thereof, required to be registered as aforesaid; *it is enacted*, that in order to entitle any person to vote at an election for a member of parliament, in respect of land tax so purchased as aforesaid, it shall not be necessary to have the same or any memorial of the contract or certificate of the purchase thereof registered, as other fee-farm rents and annuities, or a memorial of the grant thereof, are required by law to be registered before any person can vote for electing a member of parliament in respect thereof.

Registry of the purchase of land tax not necessary to entitle to vote at elections.

30 G.3. c.35. Persons may vote although tenant's name is not in the assessment.

And by stat. 30 *G.* 3. *c.* 35. after reciting that doubts had arisen, whether if the form in 20 *G.* 3. *c.* 17. be not strictly pursued, the suffrage of the person claiming to vote would be admissible, *it is enacted*, that nothing in the said act shall prevent any person from voting for any messuages, &c. on account of the tenant actually occupying the same not being inserted in such assessment according to the said form; or although the name of the person claiming to vote, or by or through whom he derives his titles, or his predecessor, shall not be inserted in the assessment in the form aforesaid; provided such messuages, &c. have been assessed to the land-tax for six calendar months next before such election, in the name of the tenant actually occupying the same at the time of the assessment being made.

20 G.3. c.17. By stat. 20 *G.* 3. *c.* 17. § 3. If any person shall hold or occupy any messuages, &c. belonging to different owners, the same shall be separately rated, that the proportion of the land-tax to be paid by each separate owner may be ascertained.

§ 3. And they shall make three duplicates of such assessments; and shall (at least fourteen days before delivering the assessments to the commissioners) cause one of them, or a fair copy thereof, to be stuck up upon the door of the church or chapel, or if it be an extra-parochial or other place where there is no church or chapel, then on the door of the church or chapel next adjoining.

§ 3. And the said duplicates shall be delivered to the commissioners, at their meeting for receiving the assessments.

§ 3. If the name of any owner entitled to vote shall not appear to be inserted in the assessment, he may, on giving notice in writing to one of the assessors, appeal to the said commissioners, who shall amend the assessment, as they shall see cause: and if any person shall think himself aggrieved by the determination of the commissioners, he may appeal to the next sessions, giving ten days' notice thereof to one of the commissioners who signed the duplicate, and to one of the assessors of the place where the estate lies; and the sessions may award costs to either of the parties, and by their order or warrant levy the same by distress. And if such commissioners, or the justices in sessions, upon any appeal before them respectively, shall find it requisite to insert the names of any persons who shall have been improperly omitted, such persons shall be deemed to be rated as effectually as if their names had been originally inserted,

§ 3. The commissioners shall cause one of the duplicates so amended (after having been signed and sealed by the said commissioners or any three of them) to be returned to the assessors, who shall within ten days deliver the same to the chief constable, taking his receipt for the same; and the chief constable shall deliver upon oath such duplicate, without alteration, at the next sessions in open court the first day of the sessions, to the clerk of the peace, to be by him filed and kept amongst the records. And if the assessor shall not deliver such duplicate so amended to the chief constable, or if the chief constable shall neglect to deliver the same to the clerk of the peace, or wilfully alter the same, he shall forfeit 5*l.* — And at the *Michaelmas* sessions yearly, the clerk of the peace shall examine, whether all the said duplicates respectively have been delivered for that year; and if it shall appear that any such duplicates have not been received by or delivered to such clerk of the peace by the chief constables, he shall report the same to the court, and the court shall immediately impose the said fine upon the chief constable, and the clerk of the peace shall give him immediate notice thereof; and if not immediately paid, the justices at such sessions shall by order of court issue a warrant of distress for the recovery thereof, directed to the constable of the place where such chief constable shall dwell.—But if the chief constable shall make oath at such sessions that such duplicate was not delivered to him by the assessor, the said fine shall be imposed upon such assessor or assessors; and the justices shall by order of court issue a warrant of distress for the recovery thereof, directed to the constable of the place or other such person as they shall think proper, and shall require the chief constable to give notice to such assessor of the said fine being imposed, who shall within fourteen days give such notice accordingly; and if such assessors, or one of them, shall not deliver such duplicate to the clerk of the peace within ten days after such notice, then the warrant of distress shall be put in execution against such assessor accordingly. But if the assessor shall, within ten days after such notice, produce to the clerk of the peace the chief constable's receipt for such duplicate, then the fine shall be levied on the said chief constable as aforesaid.— Which said fines, when recovered, shall be paid to the treasurer, and applied as part of the county stock. 20 G. 3. c. 17.

§ 9. Whenever any assessment shall not have been made by the assessors, and returned to the chief constable, and by him to the clerk of the peace, the justices in sessions, or any two justices out of sessions, may order such assessments forthwith to be made and returned in manner aforesaid. If assessment be not made.

§ 13. And all persons may, at any seasonable times, inspect the duplicates in the hands of the clerk of the peace, paying 1*s.* for each inspection; and the clerk of the peace shall on demand deliver copies of the whole or any part thereof (signed by him, purporting the same to be a true copy,) being paid at the rate of 6*d.* for every three hundred words; which said duplicates or copies thereof signed as aforesaid, and also the duplicate of any assessment in the possession of the commissioners or in the possession of the receiver-general, or a copy of the said duplicates signed by such commissioners and purporting the same to be a true copy, shall be admitted as legal evidence. And after issuing Duplicates may be inspected.

20 G.3. c.17. the writ for the election, the clerk of the peace or his deputy shall attend gratis from day to day, from the hour of nine in the forenoon to three in the afternoon, at the place where the records are usually kept, from the time of delivery of such notice to the day immediately preceding the day of election, for the purpose of inspection and making the copies. And if he shall fail of his duty in any of the said particulars, he shall forfeit 500*l.* with full costs, to the party grieved, if the action be brought within two months, or otherwise to any person who shall sue within twelve calendar months; and shall also forfeit his office, and be incapacitated for holding the like office for the future.

§ 14. Finally, the clerk of the peace shall, on reasonable notice, attend at the election of every knight of the shire, with the original duplicates, at the request of any candidate, paying to him after the rate of two guineas for each day of his attendance, and 1*s.* 6*d.* a-mile for the costs and charges in his journey from the place of his abode to and from the place of election.

18 G.2. c.18. Freeholders' oath. By stat. 18 *G.* 2. *c.* 18. § 1. Every freeholder, before he is admitted to poll for a knight of the shire, shall, if required by a candidate or any elector, take the following oath (to be administered by the sheriff, under-sheriff, or one of the sworn clerks): —

YOU shall swear [or being one of the people called Quakers, *you shall solemnly affirm*] *that you are a freeholder in the county of* ———, *and have a freehold estate consisting of* ———, [specifying the nature of such freehold estate, whether messuage, land, rent, tithe or what else; and if such freehold estate consists in messuages, lands or tithes, then specifying in whose occupation the same are; and if in rent, then specifying the names of the owners or possessors of the lands or tenements, out of which such rent is issuing, or of some or one of them] *lying or being at* ———, *in the county of* ———, *of the clear yearly value of* 40*s.*, *over and above all rents and charges payable out of or in respect of the same; and that you have been in the actual possession or receipt of the rents or profits thereof, for your own use, above twelve calendar months, or that the same came to you, within the time aforesaid, by descent, marriage, marriage-settlement, devise or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate has not been granted or made to you fraudulently on purpose to qualify you to give your vote; and that the place of your abode is at* ———, *in* ———, *and that you are twenty-one years of age, as you believe; and that you have not been polled before at this election.* — And if he falsifies he shall suffer as in cases of perjury. See 2 *Peckw.* 19—21.

10 Ann. c.23. By stat. 10 *Ann.* *c.* 23. § 5. The sheriff and clerks shall enter not only the place of his freehold, but also the place of his abode, as he shall declare the same at the time of giving his vote; and shall enter *jurat* against the name of every such voter who hath taken the oath.

19 G. 2. c. 28. And by stat. 19 *G.* 2. *c.* 28. § 2. The aforesaid stat. 18 *G.* 2. *c.* 18. shall extend to *cities and towns that are counties of themselves*, where persons have a right to vote in respect of a freehold of 40*s.* a-year; but not where they have a right to vote in respect of burgage tenure, or where the right to vote for a freehold doth not require the same to be of 40*s.* a-year.

By stat. 3 *G.* 3. *c.* 24. § 1. No persons shall vote for electing a knight of a shire, or member for a city or town being a county of itself, in respect of any annuity or rent charge granted *before June* 1. 1763, unless a *certificate* upon oath shall have been entered with the clerk of the peace or town clerk twelve months before the election, as follows: — 3 G.3. c.24. Annuitants and leaseholders.

I A. B of ———, *am really and* bonâ fide *seised of an annuity or rent charge, for my own use and benefit, of the clear yearly value of* 40*s. above all rents and charges payable out of the same, wholly issuing out of freehold lands, tenements or hereditaments, belonging to* C. D. *of* ———, *situate, lying and being in the parish, township or place, or in the parishes, townships or places of* E. *in the county of* ———, *without any trust, agreement, matter or thing to the contrary notwithstanding; and I, or the person or persons under whom I claim, was or were seised of the said annuity or rent charge before the first day of* June 1763.

§ 2. And a like certificate shall be entered (*mutatis mutandis*) where such rent charge came by descent, marriage, devise or promotion to a benefice or office.

§ 3. And no person shall vote at such election in respect of any annuity or rent charge granted *after June* 1. 1763, unless a *memorial* of the grant of such annuity or rent charge shall have been registered with the clerk of the peace or town clerk twelve calendar months at least before the first day of such election; which memorial shall be written on parchment, and directed to the clerk of the peace or town clerk, and shall be under the hand and seal of the grantor, and attested by two witnesses, one whereof to be one of the witnesses to the execution of such grant, which witness shall upon oath before such clerk prove the sealing and delivery of the grant, and the signing and sealing of the memorial. Memorial of the grant of an annuity to be registered.

§ 3. The said memorial shall contain the day and year of the date, and the names, additions and abodes of the parties and witnesses, and all the lands and tenements out of which the rent charge issues, and the place where they lie.

§ 3. The grant shall at the time of entering the memorial, be produced to such clerk of the peace or town clerk, who shall indorse thereon a certificate, in which shall be mentioned the day and year on which such memorial shall be entered.

§ 4. And no person shall vote by reason of an *assignment* of such annuity or rent charge without like certificate, entry and memorial of such grant and assignment, as in case of an original grant.

§ 5. The clerk of the peace or town clerk to have for the entry of such certificate 1*s.* and of the memorial 2*s.*; for search thereof 1*s.* and for copies at the rate of 6*d.* for every two hundred words.

By stat. 3 *G.* 3. *c.* 15. § 1. No person, claiming as a freeman to vote at an election for any city, town, port or borough, shall be admitted to poll, unless he hath been admitted to his freedom twelve calendar months before the first day of the election; and if he shall presume to vote contrary thereto, he shall forfeit 100*l.* and his vote shall be void. 3 G.3. c.15. Occasional freemen in corporations.

§ 3. And if any person shall antedate such admission, he shall forfeit 500*l*.

§ 8. But nothing herein shall extend to the cities of *London* or *Norwich*, nor to any person entitled to his freedom by birth, marriage or servitude, according to the custom of such city, town, port or borough.

26 G.3. c.100. Any person voting as an inhabitant paying scot and lot, &c. who shall not have been so six months previous to the election, to forfeit, 20l.

By stat. 26 *G*. 3. *c*. 100. § 1. No person shall be admitted to vote at any election for any city, or borough, as an inhabitant paying scot and lot, or an inhabitant, householder, housekeeper and potwaller, legally settled, or resiant, or as an inhabitant thereof, unless he shall have been actually and *bonâ fide* an inhabitant within such city or borough for six calendar months previous to the day of election; and such vote shall be null and void, and he shall forfeit 20*l*., to be recovered in the courts at *Westminster* within six months: but the same shall not extend to any person who shall acquire the possession of any house in such city or borough by descent, devise, marriage or marriage-settlement, or promotion to any office or benefice. And this shall relate only to persons who claim to vote as inhabitants, in manner as aforesaid, and shall not extend to any other description of persons who may claim to vote by any other title, or by any other superadded qualification.

7 & 8 W.3. c.4. Bribery.

By stat. 7 & 8 *W*. 3. *c*. 4. No candidate after the teste of the writ of summons, or after a place becomes vacant in parliament time, shall, by himself or by any other ways or means on his behalf, or at his charge, before his election, directly or indirectly give or promise to give to any elector any money, meat, drink, provision, present, reward or entertainment, to or for any such elector in particular, or to any county, city, town, borough, port or place in general, in order to his being elected; on pain of being incapacitated.

2 G.2. c.24.

By stat. 2 *G*. 2. *c*. 24. (which is required to be read by the returning officer immediately after reading the writ, and also at *Easter* sessions yearly for any county or city, and at every election of the chief magistrates in any borough, town corporate or cinque port) —§ 1. Every person, before he is admitted to poll, shall, if required by either of the candidates or any two electors, take the following oath, to be administered by the returning officer or his deputy: —

I A. B. *do swear*, [or being one of the people called Quakers, *I* A. B. *do solemnly affirm*] *I have not received or had by myself, or any person whatsoever in trust for me, or for my use and benefit, directly or indirectly, any sum or sums of money, office, place or employment, gift or reward, or any promise or security for any money, office, employment or gift, in order to give my vote at this election, and that I have not before been polled at this election.*

§ 7. If any person shall take any money or other reward, or contract or agree for any money, gift, office, employment or other reward, to give or forbear to give his vote, he shall forfeit 500*l*.

Offenders discovering others indemnified.

§ 8. And if any person offending shall within twelve months after such election discover any other person or persons offending against this act, so that the party so discovered be thereupon con-

victed, such discoverer not having been before convicted of any offence against this act shall be indemnified and discharged from all penalties and disabilities which he shall have then incurred by any offence against this act. 2 G.2. c.24.

In an action on this statute for bribery, it is no objection to the competency of a witness for the plaintiff to prove such bribery, that a similar action was pending against the witness himself for bribery at the same election, and that he claimed to be the first discoverer of the bribery of the defendant, and meant to avail himself of it, if necessary, in case of the defendant's conviction. Where the evidence given by such a witness of the defendant's bribery was by means of the defendant's confession of it to the witness, it was holden that the truth of the fact so confessed, as well as the confession of such fact, was material for the consideration of the jury. *Heward* v. *Shipley*, 4 *East*, 180. Discoverer, though interested, a competent witness.

By stat. 25 G. 3. *c.*84. § 5. And in all cases where no oath of qualification, other than the said oath against bribery, or the oaths of allegiance, supremacy, and abjuration, can now by law be required, every person claiming to give his vote shall (if required as aforesaid), before he is admitted to poll, take the oath following:— 25 G. 3. c. 84. New oath.

I DO *swear* [or, being a Quaker, do *affirm*,] *that my name is* A. B. *and that I am* [specifying the addition, profession or trade of such person], *and that the place of my abode is at* ———, *in the county of* ———, [and if it is a town consisting of more streets than one, specifying what street]; *and that I have not before polled at this election; and that I verily believe myself to be of the full age of twenty-one years.*

§ V. Polling.

By stat. 2 *G.* 2. *c.* 24. § 3. Before the returning officer shall proceed to the election, he shall immediately after the reading of the writ take and subscribe the following oath, to be administered by a justice of the peace or any three electors: 2 G. 2. c. 24. Returning officer to be sworn.

I A. B. *do solemnly swear, that I have not, directly or indirectly, received any sum or sums of money, office, place or employment, gratuity or reward, or any bond, bill or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use, or benefit or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes.*

Which oath shall be entered amongst the records of the sessions.

By stat. 25 *G.* 3. *c.* 84. § 1. Every poll which shall be demanded, shall commence on the day upon which the same shall be demanded, or upon the next day at farthest (unless it be *Sunday*, and then on the day after) and shall be duly and regularly proceeded in from day to day (*Sundays* excepted) until the same be finished; but so as not to continue more than fifteen days at most, (*Sunday* excepted,) and if the same shall continue for fifteen days, then to be finally closed before the hour of three in the afternoon of that day. 25 G. 3. c. 84. A poll being demanded, not to continue more than fifteen days.

25 G.3. c. 84. Poll to be kept open seven hours a-day. § 3. Every returning officer, unless prevented by some unavoidable accident, shall cause the said poll to be kept open for seven hours at the least in each day, between eight in the morning and eight at night.

Poll clerks to be sworn. § 7. Every person employed as a poll clerk shall, before he begins to take such poll, be sworn by such returning officer, truly and indifferently to take the said poll, and to set down the name of each voter, and his addition, profession or trade, and the place of his abode, and for whom he shall poll. See 1 *Peckw.* 506, 507.

34 G.3. c.73. 42 G.3. c. 62. Persons to be appointed to administer the oaths, &c. And by stats. 34 *G.*3. *c.*73. § 1., and 42 *G.*3. *c.*62. § 1., after reciting that in many places it may be impracticable to receive the votes of all persons claiming and having a right to vote within the time limited as aforesaid, it is enacted that when a poll shall be demanded, the returning officer shall, at the request in writing of any candidate under his hand, immediately after such request, and before he shall proceed further in taking the poll, appoint two or more persons to administer all the oaths required to be taken by voters, [except that by stat. 43 *G.* 3. *c.*74. the oath or affirmation required by stat. 2 *G.*2. *c.*24. shall be taken by every person before he is admitted to poll in manner as prescribed by the said act, if demanded;] and to certify the names of electors who shall have taken such oaths, or subscribed and made such declaration or affirmation respectively. And every person so appointed, shall immediately, and before he shall act, take the following oath, to be administered by the returning officer, or his deputy: —

43 G.3. c.74.

42 G. 3. c. 62. Oaths to be taken by such persons. *I DO swear, that I will faithfully and impartially administer the oaths, and take the declarations and affirmations, now required by law to be taken or made by voters at elections for members to serve in parliament, to and from such persons as shall lawfully apply to me in that behalf, in order to qualify themselves to vote at this election; and that I will, on being thereunto requested, fairly and truly give to every such person, or any of them, who shall take such oaths, or make such declarations or affirmations respectively or any of them, before me, a certificate thereof; and that I will not give such certificate to any person before he shall have taken such oath or oaths, or make such declaration or declarations, affirmation or affirmations respectively, as shall be mentioned in such certificate, before me and in my presence.*

34 G. 3. c. 73. If a sufficient number have not been appointed. And by stat. 34 *G.*3. *c.* 73. § 4. If at any time during the election it shall be found that the number of persons so appointed are insufficient for the purpose, and that the poll is delayed thereby, the returning officer, at the *request in writing* of any candidate then present, shall appoint more in like manner as aforesaid.

Electors to take the oaths, &c. before such persons, who shall give certificates thereof. § 2. Any person claiming to vote may apply to one of the persons so appointed to take the said oaths, or to make and subscribe such declaration or affirmation as aforesaid, and such person shall administer the same accordingly, and shall immediately sign and deliver a certificate thereof, which shall contain the name, addition, and place of abode of the person to whom the same shall be so delivered, and be in the following form: —

A. B. [naming the person taking the oath] *of* [naming the place

of such person's abode, and his addition or occupation,] *has taken the oath* [or *oaths*] *of* [naming the said oath or oaths, so administered] *before me, this* ——— *day of* ———. 34 G. 3. c 73.

And in case of Quakers subscribing the said declaration of fidelity, or taking their affirmation of the effect of the said oath of abjuration, shall be in the form following: (that is to say)

A. B. [naming the person subscribing or affirming] *of* [naming the place of such person's abode, and his addition or occupation], *has made and subscribed the declaration of fidelity, and affirmed the effect of the oath of abjuration* [or if only one of those acts has been done, then naming such one act only,] *before me, this* ——— *day of* ———.

Production of certificate to entitle to vote.

And such person, on producing such certificate to the returning officer or person taking the poll, shall be permitted to poll in like manner as if such oaths, &c. had been taken before the returning officer.

No person to vote without producing such certificate.

§ 3. If any person shall offer to vote without producing such certificate, and being lawfully required to take the said oaths, and make such declaration as aforesaid; the same shall not be administered to him by the returning officer or person taking the poll, but he shall immediately withdraw, and take the same before one of the persons appointed as aforesaid.

Proper places to be appointed for taking such oaths, &c.

§ 5. The returning officer shall provide a proper place for every such person so appointed, to which place the respective electors may have free access without interrupting the poll, and so as the persons so appointed may act separately without interfering with each other; and every such place shall be open and attended by the person appointed to act there, during all the time of the poll; and shall be kept open eight hours at least in every day between eight in the morning and eight in the evening, until the final close of the poll; and such oaths, &c. shall be administered to as many of the electors, being ready, as conveniently can, not exceeding twelve at one time. And the returning officer shall deliver to each person so appointed a sufficient number of printed forms of the declaration to be made by quakers, with blanks therein for the names of the persons offering to make and subscribe the same to be inserted therein; and also a sufficient number of printed certificates in the like form, to be filled up and delivered to each elector so taking the said oaths or affirmation.

Such places to be provided previous to the election, if required.

§ 6. In case any candidate shall, three days at the least before such election, give or cause to be given notice in writing to the returning officer to provide proper places for administering the said oaths, declarations and affirmations, he shall prepare and provide such proper places so as to be ready before and against the day of election; and in case there shall not be a sufficient number of fit and convenient places for that purpose at the town or place where such election shall be had, which the returning officer can conveniently and at a reasonable expence procure, then he shall cause such booths or temporary erections to be made in convenient places in that behalf as shall be necessary for the purpose; the expence of which, and of the said printed forms, and also the allowance to be made to the several persons appointed

Expences to be defrayed by the candidates.

34 G.3. c.73. to administer the oaths, &c. as aforesaid (not exceeding one guinea a-day each for every day's attendance) shall be paid by the candidates in equal proportions, to the returning officer, which, if not paid, may be recovered in the courts at *Westminster.*

What votes shall be deemed legal. And by stat. 2 *G.* 2. *c.* 24. § 4. Such votes shall be deemed to be legal, which have been so declared by the last determination in the house of commons; which last determination, concerning any county, city, borough, cinque port or place, shall be final to all intents and purposes.

[N. B. *Repealed as to any determination of the House of Commons subsequent to* stat. 28 G. 3. c. 52. *See* § 31. *of that act.*]

§ VI. Return and Expences of Election.

7 H. 4. c. 15. By stat. 7 *H.* 4. *c.* 15. After the election, the names of the persons chosen shall be written in an indenture under the seals of the electors, and tacked to the writ.

25 G.3. c.84. Return to be made. By stat. 25 *G.* 3. *c.* 84. § 1. The returning officer shall, immediately after the final close of the poll, or on the day next after, truly, fairly and publicly declare the name of the person who hath the majority of votes, and shall forthwith make a return of such person; unless the returning officer, upon a scrutiny being demanded by any candidate or any two electors, shall deem it necessary to grant the same; in which case he shall proceed thereon, but so as that in all cases of a general election every returning officer, having the return of the writ, shall cause a return of a member to be filed in the crown office, on or before the day on which such writ is returnable; and every other returning officer, acting under a precept or mandate, shall make a return of a member in obedience to the same, six days at least before the day of the return of the writ, by virtue of which such election has been made: and so that, in case of an election upon a writ issued during a session or prorogation of parliament, and a scrutiny being granted as aforesaid, then a return of a member shall be made within thirty days after the close of the poll (or sooner if the same can conveniently be done).

Scrutiny being demanded.

Return not to be contrary to the last determination. By stat. 7 & 8 *W.* 3. *c.* 7. § 1, 2. If any officer shall return any member contrary to the last determination in the house of commons, the same shall be adjudged a false return; and the party duly elected may recover double damages, with full costs.

Double return. § 3. And the like remedy shall be against an officer making a *double* return. See 1 *Peckw.* 16.

How to proceed on a scrutiny. By stat. 25 *G.* 3. *c.* 84. § 2. Whenever a scrutiny shall be granted as aforesaid, and there shall be more parties than one, the returning officer shall decide alternately on the votes given for the different candidates who shall be parties to such scrutiny, or against whom the same shall be carried on.

Witnesses may be sworn. § 6. And such returning officer may, if he see cause during such scrutiny, administer an oath to any person consenting to take the same, touching the right of any person having voted, or touching any other matter or thing material or necessary towards carrying on such scrutiny.

§ 9. But nothing herein shall extend to alter or affect the election of any member for any place where particular regulations are specially enacted by statute.

§ 10. If upon any writ issued no return shall be made on or before the day on which such writ is returnable: or if a writ shall have been issued during any session or prorogation of parliament, and no return shall be made within fifty-two days after the day on which such writ bears date, or if the return made in either case shall not be a return of *a member* according to the requisition thereof, but contain special matter only concerning such election; any person having or claiming a right to vote, or claiming a right to be returned, who shall think himself aggrieved, may petition the house of commons concerning the same; and upon such petition being presented, a day and hour shall be appointed for taking the same into consideration, and notice thereof in writing shall be forthwith given by the speaker to the petitioners, and to the officer by whom such return should have been made, accompanied with an order to attend the house at the time appointed by themselves, or their counsel, or agents; and a select committee shall be appointed according as is directed by 10 & 11 *G.* 3., who shall proceed therein as by the said acts are directed; and all rules and regulations in either of the said acts contained shall extend to this act. 25 G. 3. c. 84. Where no member is returned.

§ 8. Every person who, in taking any oath herein-before appointed, shall thereby commit wilful perjury, or unlawfully and corruptly procure or suborn any other person to take any such oath, whereby he shall commit such wilful perjury, and shall be thereof convicted, shall incur such penalties as are inflicted by stats. 5 *El. c.* 9. & 26 *G.* 2. *c.* 25. § 8. Persons committing perjury.

And by stat. 7 & 8 *W.* 3. *c.* 25. § 6. Every such sheriff or returning officer shall deliver copies of the poll to any person desiring the same, paying a reasonable charge for writing thereof. 7 & 8 W. 3. c. 25. Copies of the poll.

Finally, by stat. 10 *Ann. c.* 23. § 5. he shall, within twenty days after the election, deliver over upon oath (to be administered by the two next justices, (1 Q.) the poll books to the clerk of the peace, without alteration, to be kept amongst the records of the sessions. 10 Ann. c. 23.

And on petition to the house of commons, complaining of an undue election, forty-nine members of the house of commons shall be chosen by ballot, out of whom each party shall alternately strike out one, till they be reduced to the number thirteen; who, together with two more, of whom each party shall nominate one, shall be a select committee for determining such controverted election. Stats. 10 *G.* 3. *c.* 16., 11 *G.* 3. *c.* 42. both made perpetual by stat. 14 *G.* 3. *c.* 15., and since amended by stat. 25 *G.* 3. *c.* 84.; 28 *G.* 3. *c.* 52.; 32 *G.* 3. *c.* 1.; 36 *G.* 3. *c.* 59.; 42 *G.* 3. *c.* 84.; 47 *G.* 3. *c.* 1.; 53 *G.* 3. *c.* 71. See 18 *G.* 2. *c.* 18. as to certain expenses, *ante*, § 1. Petition to the house of commons.

§ VII. Privilege of Parliament.

By the common law, a member of parliament shall have the privilege of parliament, not only for himself and his servants, to be freed from arrest, subpœna, citation and the like, but also for his horses and goods to be free from distresses: but for treason, felony, and breach of the peace, there can be no privilege. 4 *Inst.* 24, 25. Privilege of himself and servants.

Not privileged against a process of the courts at Westminster.

Rex v. *Earl Ferrers*, 1 *Burr.* 631. A writ of *habeas corpus* having been granted and served upon the said earl, returnable *immediate*, to bring up the body of his countess, who was sister to Sir *William Meredith*, (that she might have an opportunity to lay her case before the court, and swear the peace, if she should think proper, thereby to receive the protection of the court against the said earl,) and the earl having neglected to return the said writ, the counsel for Sir *William Meredith*, on behalf of his sister, intended to have moved for an attachment against the earl for this his disobedience. But some doubts and difficulties having been started by members of both houses concerning the privilege of peerage, and whether the court of king's bench could issue an attachment against a peer during the sitting of parliament, and execute it upon him, only for a contempt to their court, Sir *William* judged it prudent to petition the house of lords, for their leave to proceed against the earl, and accordingly (by the hands of the earl of *Westmoreland*) delivered a petition, stating the facts. Lord *Delaware* opposed it; and said it was too summary and hasty a method of determining upon their privileges; and proposed referring the matter to a committee, and summoning Lord *Ferrers* to answer it in his place: and to obviate the objections which might be made to this method, on account of the delay, he offered some schemes for the immediate safety of the countess. But Lord *Mansfield* answered him, and spoke in support of the jurisdiction of his court, and the unreasonableness, injustice, and inconvenience of allowing such a privilege in criminal cases and breaches of the peace. The Duke of *Argyle* spoke to the like effect, and expressed a surprise that there should be any doubt about it; the reason of the thing being so clear and plain. Lastly, the Earl of *Hardwicke* spoke strongly and particularly in support of the same doctrine, and adduced many instances and precedents in proof of his position; and concluded with proposing that, to put an end to all doubts about it for the future, the lords should come to a resolution; and accordingly they did come to the following resolution or declaration, and ordered it to be entered on their journal, *viz.* "7*th February*, 1757, It is ordered and declared that no peer or lord of parliament hath privilege against being compelled by process of the courts of *Westminster-hall* to pay obedience to a writ of *habeas corpus* directed to him."

Note.—The *Habeas Corpus* act is a remedial law; and the judges of every court are bound to enforce its provisions according to their spirit, in such a manner as most effectually to relieve the subject from illegal imprisonment. *Per Ld. Alvanley* C.J. 2 *Bos. & Pull.* 535.

Privileged from attachment for non-payment of money.

But members of either house are privileged from an attachment for non-payment of money. 7 *T. R.* 171. 448.

May be sued, but not arrested.

By stats. 12 & 13 *W. c.* 3. and 11 *G.* 2. *c.* 24. Any person may bring an action against a peer or member of parliament, or any of their menial or other servants, immediately after the dissolution or prorogation, until a new parliament meet, or the same be re-assembled; and from any adjournment of both houses for above fourteen days until both houses shall meet or re-assemble; and the courts during such time may proceed to give judgment and award execution.—But this shall not extend to subject the person to be

arrested during the time of privilege; but the plaintiff may prosecute at law by summons and distress infinite, or by original bill and summons, attachment, and distress infinite, until the defendant shall enter a common appearance, or file common bail. And in equity, the plaintiff may proceed by letter or subpœna; and after service thereof may, for want of appearance or answer, or non-performance of an order or decree, or for breach thereof, sequester the real and personal estate of the party, but not arrest his body.

By stat. 52 *G.* 3. *c.*144. A member of parliament may be a bankrupt; but he vacates his seat, unless the commission is superseded within twelve months from its being issued, or the creditors are paid their debts in full within the same period. *Vide ante.*

Where the bankrupt is a member of parliament, or has the protection of parliament. 5 G. 4. c. 98

By stat. 5 *G.*4. *c.*98. § 9. Traders having privilege of parliament committing acts of bankruptcy, may be proceeded against as bankrupts.

By § 10. Any such traders not paying or compounding to the satisfaction of the creditor, and also entering an appearance to the action within one month, commit an act of bankruptcy.

By § 11. Any such trader disobeying the order of any court of equity, or in bankruptcy or lunacy for payment of money, after personal service and peremptory day fixed for payment of the money, an act of bankruptcy.

Prosecuting actions against peers or members of parliament.

And by stat. 10 *G.* 3. *c.*50. Any person may commence and prosecute any action in any court of record or court of equity, or of admiralty, (or, in causes matrimonial and testamentary, in any court having cognisance of such causes), against any peer or member of the house of commons, or any of their menial or other servants, or any other person entitled to privilege of parliament; and no proceedings thereupon shall be delayed under colour of such privilege. But this shall not subject the person of any member of the house of commons to be arrested or imprisoned on any such suit or proceedings. And to remedy the dilatoriness by process of *distringas*, the court out of which the writ proceeds may order the issues levied from time to time to be sold, and the money arising thereby to be applied to pay such costs to the plaintiff as the court shall think just, and the surplus to be detained till the defendant shall have appeared, or other purpose of the writ be answered. And obedience may be enforced to any rule of the court of king's bench, common pleas, or exchequer, against any person entitled to privilege, by distress infinite, if the person entitled to the benefit of such rule shall choose to proceed in that way.

§ VIII. How long the Parliament shall continue.

To continue seven years.

By stat. 1 *G.* 1. *st.* 2. *c.*38. The parliament shall have continuance for seven years, to be accounted from the day on which, by the writ of summons, they shall be appointed to meet; unless sooner dissolved by the king.

Not dissolved by the death of the king.

And by stats. 7 & 8 *W.* 3. *c.*15. and 6 *Ann.* *c.*7. They shall not be dissolved by the death of the king, but shall continue and immediately meet, sit, and act for six months, unless sooner dissolved by the

successor. And if there be then no parliament in being, the last preceding parliament shall meet, sit, and act as aforesaid.

§ IX. When an Act of Parliament shall take Date.

33 G.3. c.13.

By stat. 33 *G.* 3. *c.*13. After reciting, that in every act of parliament in which the commencement thereof is not directed to be from a specific time, it doth commence from the first day of the session of parliament in which such act is passed, which is liable to produce great injustice, it is enacted that the clerk of the parliaments shall indorse (in *English*) on every act of parliament which shall pass after the 8th of *April* 1793, immediately after the title of such act, the day, month, and year, when the same passed and received the royal assent; which indorsement shall be taken to be the date of its commencement, where no other commencement shall be therein provided.

48 G.3. c.106. Where bills for continuing expiring acts shall not pass before the acts expire, such acts shall be continued from their expiration except as to penalties.

By stat. 48 *G.* 3. *c.*106. Where any bill shall be introduced into any session of parliament, for the continuance of any act which would expire in such sessions, and such act shall have expired before the bill for continuing the same shall have received the royal assent, such continuing act shall be deemed to have effect from the date of the expiration of the act intended to be continued, except it shall be otherwise provided in such continuing act: but nothing herein contained shall extend to affect any person with any punishment, penalty, or forfeiture, by reason of any thing done, or omitted to be done, contrary to the provisions of the act continued, between the expiration of the same, and the date at which the act continuing the same shall receive the royal assent.

§ X. Improperly procuring an Election.

49 G.3. c.118.

By stat. 49 *G.* 3. *c.*118. After reciting, that the giving or promising to give money, &c. in order to procure the return of any member to serve in parliament, if not given to or for the use of some person having a right or claiming to have a right to act as returning officer, or to vote at such election, is not bribery within the meaning of the 2 *G.* 2. *c.*24., it is enacted, that if any person shall, either by himself, or by any other person for or on his behalf, give or cause to be given, directly or indirectly, or promise or agree to give any sum of money, gift, or reward to any person, upon any engagement, contract, or agreement, that such person to whom, to whose use, or on whose behalf such gift or promise shall be made, shall by himself, or by any other person whatsoever at his solicitation or command, procure or endeavour to procure the return of any person to serve in parliament, every person so having given or promised to give, if not returned himself in parliament for such county, &c., shall, for every such gift or promise, forfeit 1000*l.*, to be recovered as hereinafter provided with respect to the sum of 500*l*; and every such person so returned, and so having given or promised, or knowing of and consenting to such gifts or promises, upon any such engagement, &c., shall be thereby disabled to serve in that parliament for such county, &c.; and such person shall be deemed to be no member of parlia-

Penalty on persons giving or receiving money to procure the election of a member of parliament, though such money, &c. be not given to voters.

ment, as if never returned or elected a member; and any person who shall receive or accept of, by himself, or by any other in trust for, or to the use or on the behalf of him, any such sum of money, gift, or reward, or any such promise upon any such engagement, &c. shall forfeit to H. M. the value and amount of such sum of money, &c. over the sum of 500*l.*, which said 500*l.* he shall forfeit to any person who shall sue for the same, to be recovered, with costs of suit, by action of debt, &c. in any of H. M.'s courts at *Westminster*, if the offence be in *England* or *Wales*, and at *Dublin*, if committed in *Ireland*. 49 G.3. c.118.

§ 2. Provides that the act shall not extend to any money paid or agreed to be paid to or by any person for any legal expence *bonâ fide* incurred at or concerning any election.

By § 3. If any person shall by himself, or by any other person on his behalf, give or procure to be given, any office, place or employment, to any person upon any express contract or agreement that such person, to whom or to whose use or on whose behalf such gift or promise shall be made, shall by himself, or by any other person at his solicitation or command, procure or endeavour to procure the return of any person to serve in parliament for any county, &c. (as in § 1.) such person so returned, and so having given or procured, or so having promised to give or procure, or knowing of and consenting to such gift or promise upon any such express contract or agreement, shall be disabled and incapacitated, &c. (as in § 1.); and any person who shall receive or accept of by himself, or by any other person in trust for or to the use or on the behalf of such persons, any such office, &c. upon such express contract or agreement, shall forfeit such office, &c. and be incapacitated for holding the same, and shall forfeit 500*l.*, which said 500*l.* shall be recovered as is herein-before enacted; and any person holding any office under H. M., who shall give such office, &c. upon any such express contract, &c. that the person to whom, &c. such office, &c. shall have been given, shall so procure or endeavour to procure the return of any person to serve in parliament, shall forfeit 1000*l.*, to be recovered as is herein-before provided. Giving any office, &c. for election purposes.

By § 4. Actions upon this statute must be commenced within two years next after the offence committed, excepting where the party absconds. Limitation of actions.

Parsnips.

THE penalty for stealing parsnips is the same as for stealing turnips; for which see the title Turnips, Vol. V.

Partition.

8 & 9 W.3. c.31.

BY stat. 8 & 9 *W.* 3. *c.* 31. intituled, An act for the easier obtaining partitions of lands in coparcenary, joint-tenancy, and tenancy in common; it is enacted that if the high sheriff cannot conveniently be present at the execution of any judgment in partition, in such case the under-sheriff, in presence of two justices, may proceed to execution of the writ of partition.

Partridge. See **Game.**

Pawning.

[30 G.2. c.24.—25 G.3. c.48.—39 & 40 G.3. c.99.—55 G.3. c.184.—5 G.4. c.107.]

25 G.3. c.48. Licence.

BY stat. 25 *G.* 3. *c.* 48. § 1. 3, 4. 12. Every person exercising the trade of a *pawnbroker* shall take out a licence, and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 50*l.*; to be recovered in the courts at *Westminster.*

55 G.3. c.184.

By stat. 55 *G.* 3. *c.* 184. *Sch. part* 1. Upon every licence to be taken out yearly for using or exercising the trade or business of a pawnbroker, within the cities of *London* and *Westminster,* or within the limits of the two-penny post, there shall be paid a duty of 15*l.*

And for using or exercising the trade or business of a pawnbroker elsewhere, 7*l.* 10*s.*

§ 3. The said duties to be under the management of the commissioners of the stamp duties.

25 G.3. c.48.

By stat. 25 *G.* 3. *c.* 48. § 7, 8. No person shall keep more than one house or shop by virtue of one licence; but persons in partnership need only take out one licence for one house.

Who shall be deemed pawnbrokers.

§ 5. All persons who shall receive by way of pawn, pledge or exchange, any goods for the repayment of money lent thereon, shall be deemed pawnbrokers.

Not persons lending at 5 per cent.

§ 6. But the same shall not extend to any person who shall lend money at 5*l. per cent.* interest, without taking any further or greater profit for the loan thereof. See also 39 & 40 *G.* 3. *c.* 99. § 30.

39 & 40 G.3. c.99. Certain words to be put up.

By stat. 39 & 40 *G.* 3. *c.* 99. § 23. & 26. Every pawnbroker shall cause his *christian* and *surname,* and the word "*Pawnbroker,*" to be painted or written in large legible characters over the door of his shop or other place used by him for carrying on such business, on pain of forfeiting 10*l.* for every shop or place made use of for one week without having the same so put up; to be recovered on confession, or by oath or affirmation of one witness, by

distress and sale, by warrant under the hands and seals of two justices, half to the informer, and half to the poor; and if there be not a sufficient distress, or payment be not forthwith made, the offender to be committed to the county gaol or house of correction, not exceeding three calendar months, nor less than fourteen days, unless such penalty and reasonable charges shall be sooner paid. 39 & 40 G.3. c. 99.

36 G. 3. c. 87. Rate of profit to be taken.

Stat. 36 *G.* 3. *c.* 87. being in force only for three years, and till the end of the then next session of parliament, the 39 & 40 *G.* 3. *c.* 99. was substituted in lieu thereof; and thereby it is enacted, § 2., that every pawnbroker may demand and take the following rates over and above the principal sum advanced, before he shall be obliged to re-deliver the goods pawned, (*viz.*)

For every pledge upon which there shall have been lent not exceeding 2*s.* 6*d.* one halfpenny, for any time not exceeding one calendar month, and the same for every calendar month afterwards, including the current month in which such pledge shall be redeemed, although such month shall not be expired:

	£	s.	d.				
If	0	5*s.*	0*d.*	shall have been lent thereon,			1*d.*
—	0	7	6	—	ditto	—	1½*d.*
—	0	10	0	—	ditto	—	2*d.*
—	0	12	6	—	ditto	—	2½*d.*
—	0	15	0	—	ditto	—	3*d.*
—	0	17	6	—	ditto	—	3½*d.*
—	1	0	0	—	ditto	—	4*d.*
—	1	2	6	—	ditto	—	4½*d.*
—	1	5	0	—	ditto	—	5*d.*
—	1	7	6	—	ditto	—	5½*d.*
—	1	10	0	—	ditto	—	6*d.*
—	1	12	6	—	ditto	—	6½*d.*
—	1	15	0	—	ditto	—	7*d.*
—	1	17	6	—	ditto	—	7½*d.*
—	2	0	0	—	ditto	—	8*d.*
—	2	2	0	—	ditto	—	8*d.*

And if exceeding 42*s.* and not exceeding 10*l.* after the rate of 3*d.* for every 20*s.* by the calendar month including the current month, and so in proportion for any fractional sum; which said several sums shall be in lieu of and taken as a full satisfaction for all interest due, and charges for warehouse room.

§ 3. And where any intermediate sum lent upon pawn shall exceed 2*s.* 6*d.* and not exceed 40*s.* the person lending the same may take a profit as aforesaid at the rate of 4*d.* and no more, for the loan of 20*s.* by the calendar month, including the current month as aforesaid. Intermediate sum.

§ 5. But the party entitled to and applying for the redemption of goods pawned within seven days after the end of the first calendar month after the same have been pledged, may redeem the same without paying any thing by way of profit to the pawnbroker for the said seven days, or such part thereof as shall then have elapsed; and after the expiration of the said first seven days, and before the expiration of the first fourteen days of the second calendar month, he may redeem such goods upon paying the profit payable for one calendar month and a half; but if after the expiration of the first fourteen days and before the end of Profits for part of a month limited.

39 & 40 G.3. c.99.

the said second calendar month, the pawnbroker may take a profit of the whole second calendar month; and the like regulation and restriction shall take place in every subsequent calendar month wherein application shall be made for redeeming goods pawned.

Pawnbrokers to give farthings in exchange.

§ 4. In all cases, where the lowest fraction of the sum to be received by any pawnbroker from persons offering to redeem goods shall be a farthing, and such person shall have paid the sum due except the last farthing, and shall not produce a current farthing, but in lieu thereof shall tender a halfpenny, such pawnbroker shall in exchange deliver to such person redeeming such goods one good and lawful farthing, or in default thereof shall abate the remaining farthing from the sum total.

Table of the rates to be put up.

§ 22. Every pawnbroker shall cause to be painted or printed in large legible characters the rate of profit allowed by this act to be taken, and also the various prices of the notes or memorandums to be given according to the rates aforesaid, and an account of such as are to be given *gratis*, and of the expence of obtaining a second note or memorandum, where the former one has been lost, mislaid, destroyed, or fraudulently obtained, and place the same in a conspicuous part of the shop or place where such business is carried on, so as to be visible to and legible by persons pledging goods, standing in the places provided for such persons coming to pawn or redeem goods.

An account of goods pawned to be entered in a book.

§ 6. Every person who shall take any goods by way of pawn, or pledge, whereon shall be lent above *5s.*, shall, before he advance or lend any money thereon, enter in a fair and regular manner in a book to be kept by him for that purpose a description of such goods so received in pawn, pledge, or exchange, and the sum lent thereon, with the day and year, and name of the person by whom they were pawned, and the name of the street, and number of the house, if numbered, where such person shall abide, and whether he be a lodger in or keeper of such house, by using the letter L. if a lodger, and the letter H. if a housekeeper, and also the name and place of abode of the owner, according to the information of the person so pawning the same; into all which circumstances he is required to enquire of the party before any money shall be advanced, and if the sum lent shall not exceed *5s.* such entry shall be made within four hours after the said goods shall have been pawned, &c. and every pledge upon which shall be lent above 10*s.* shall be entered in a book to be kept for that purpose, separate from all other pledges; and every such entry shall be numbered in such book progressively, as they are pawned, in the following manner; (viz.) the first pledge that is received in pawn in *September* next, No. 1, the second, No. 2, and so on progressively until the end of the month; and the first pledge in the next month shall be numbered 1, and the second 2, and so on progressively in like manner until the end of the month, and so on in every succeeding month throughout the year; and upon every note respecting such pledge shall be written the number of entry of such pledge so entered in such book as aforesaid. And at the time of taking every pawn a note or memorandum written or printed shall be given to the person pawning, pledging, or exchanging the same, containing a description of such goods received in pawn, &c. and also the money advanced thereon, with

the day of the month and year, and names and places of abode, and numbers of the houses of the parties, and whether lodgers or housekeepers, by using the letters aforesaid; and upon such note or memorandum, or on the back thereof, shall be written or printed the name and place of abode of such pawnbroker, which note or memorandum the party pawning such goods is required to take, and unless he shall take the same, such broker shall not receive and retain such pledge: And such note where the sum lent is under 5*s.* shall be given *gratis.* 39 & 40 G.3. c.99.

Rates of allowance for duplicates.

If the sum lent is	5*s.* and under	10*s.*	such broker may take	½*d.*
Ditto	10*s.*	ditto	20*s.*	ditto	1d.
Ditto	20*s.*	ditto	5*l.*	ditto	2*d.*
Ditto	5*l.* and upwards			ditto	4*d.*

See also stat. 30 G.2. *c.*24. § 4.

§ 6. Which note shall be produced to the pawnbroker before he shall be obliged to redeliver such goods, except as hereafter is excepted.

§ 7. And in all cases where goods pawned shall be redeemed, the pawnbroker shall write or indorse, or cause, &c. upon every duplicate the profit taken by him, and shall keep such duplicate in his custody for one year next following. Profits taken to be indorsed on duplicates.

§ 8., and 30 *G.*2. *c.*24. § 3. If any person shall knowingly and designedly pawn, pledge, or exchange, or unlawfully dispose of the goods of any other person not being employed or authorised by the owner so to do, any justice may grant his warrant to apprehend such offender; and if he shall be thereof convicted by the oath of one witness, or confession, before any justice for the county, &c. he shalf forfeit not more than 5*l.* nor less than 20*s.* and also the value of the goods; and if not forthwith paid, the justice convicting shall commit him to the house of correction, or some other public prison of the county or place where the offender shall reside or be convicted, there to remain and be kept to hard labour for not more than three calendar months, unless the forfeiture shall be sooner paid; and if within three days before the expiration of the said term of commitment the forfeiture shall not be paid, the justice may order such person to be publicly whipped in such house of correction or prison, or in some open public place of the county, city, division, town, or place wherein the offence shall have been committed, as he shall think proper. The said forfeitures, when recovered, to be applied towards making satisfaction thereout to the party injured, and defraying the costs of the prosecution, as shall be adjudged reasonable by the justice who shall have convicted; but if the party injured shall decline to accept of such satisfaction and costs, or if there be any overplus of the same, then such forfeitures or overplus shall be paid to the overseers for the use of the poor of the parish or place where the offence was committed. See 2 *Russ.* 1297. Pawning goods the property of others. Penalty.

By stat. 39 & 40 G. 3. *c.*99. § 9. If any person shall counterfeit, forge, or alter any such note or memorandum, or cause or procure the same to be done; or shall utter, vend, or sell such note or memorandum, knowing the same to have been counterfeited, forged, or altered, with intent to defraud any person; such offender shall be punished as hereafter mentioned; and any person, or his servant or agent, to whom any note shall be uttered, shown, or offered, which he shall have reason to suspect to have been Forging or counterfeiting notes or memorandums.

39 & 40 G.3. c.99.

counterfeited, &c. may seize the person so offering, &c. and deliver him to a constable, who shall convey him before some justice of the place where such offence is supposed to have been committed; and if upon examination it shall appear to the satisfaction of such justice that such person is guilty, he shall commit him to the gaol or house of correction of the county, &c. where such offence was committed, for any time not exceeding three calendar months.

Persons offering goods in pawn not giving a good account of themselves.

§ 10. If any person who shall offer by way of pawn, pledge, exchange, or sale, any goods, shall not be able or shall refuse to give a satisfactory account of himself, or of the means by which he became possessed thereof, or shall wilfully give any false information to the pawnbroker or his servant, as to whether such goods are his own property or not, or of his name and place of abode, or the name and place of abode of the owner of such goods, or if there shall be any other reason to suspect that such goods are stolen, or otherwise illegally or clandestinely obtained; or if any person not entitled, nor having any colour of title by law to redeem such goods shall attempt to redeem the same, it shall be lawful for any person, his servant, or agent, to whom the same shall be offered, to seize and detain such person, and the said goods, and to deliver him immediately into the custody of a constable, who shall as soon as may be convey such person and the said goods before a justice; and if such justice shall upon examination and enquiry have cause to suspect that the said goods were stolen, or illegally or clandestinely obtained, or that the person offering to redeem the same hath not any pretence or colour of right so to do, he shall commit such person into safe custody for such reasonable time as shall be necessary for obtaining proper information, in order to be further examined; and if upon either examination it shall appear to the satisfaction of such justice that the said goods were stolen, or illegally or clandestinely obtained, or that the person offering to redeem the same hath not any pretence or colour of right so to do, he shall commit such offender to the gaol or house of correction of the county, &c. where the offence was committed, to be dealt with according to law, where the nature of the offence shall authorise such commitment by any other law; and where it shall not, then the same shall be for any time not exceeding three calendar months, at the discretion of such justice. See also 30 *G.* 2. *c.*24. § 7, 8.

Receiving goods in pawn in a state of manufacture, or linen, &c. put out to wash, &c.

§ 11., and 30 *G.* 2. *c.* 24. § 6. If any person shall knowingly buy, or take in pawn, or exchange, any goods of any manufacture, or of any part or branch of any manufacture, either mixed or separate, or any materials plainly intended for manufacturing any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be thereupon or therewith performed, and before such goods or materials are finished for the purpose of wear or consumption; or any goods, materials, linen, or apparel, which are intrusted to any person to wash, scour, iron, mend, manufacture, work up, finish, or make up, and shall be convicted thereof, upon confession, or on the oath of one witness, before one justice, he shall forfeit double the sum given for or lent on the same, to be paid to the poor, and to be recovered in like manner as other forfeitures are

by this act directed, and such goods and materials shall also be restored to the owner in the presence of such justice. 39 & 40 G.3. c.99.

§ 12. If the owner of any goods of any manufacture, &c. &c. [*as before*] or any linen or apparel, which goods, &c. shall be so intrusted to wash, &c. as aforesaid, which shall be unlawfully pawned or exchanged, shall make out either on his oath or the oath of one witness, or solemn affirmation, before one justice, that there is just cause to suspect that any person hath taken to pawn or exchange any such goods, &c. without his knowledge, and shall make appear probable grounds for such suspicion, such justice may issue his warrant for searching within the hours of business, the house, warehouse, or other place of any such person, who shall be charged on oath, &c. as suspected of having received the same without the privity of the owner; and if the occupier of any such place shall, upon request being made to him by any peace officer authorised to search, refuse to open such place, and permit such search to be made, such peace officer may break open any such house, warehouse, or place within the hours of business, and search as he shall think fit therein for the goods suspected to be there, doing no wilful damage, and no person shall oppose the same; and if upon such search any such goods, &c. so pawned or exchanged shall be found, and the property of the owner shall be made out to the satisfaction of such justice, by the oath or solemn affirmation of one witness, or by the confession of the person charged, such justice shall cause the goods, &c. so found to be forthwith restored to the owner. See also stat. 30 G. 2. *c.* 24. § 9.

Such goods may be searched for by warrant from a justice.

§ 13. And if the owner of any goods unlawfully pawned, pledged, or exchanged, shall make out either on his oath or by the oath, &c. of one witness before one justice that such owner hath had his goods unlawfully obtained or taken from him, and that there is just cause to suspect that any person within the jurisdiction of such justice hath taken to pawn, or by way of pledge, or in exchange, any goods of such owner, and without his privity or authority, and shall make appear to the satisfaction of such justice, probable grounds for such the owner's suspicion: he may issue his warrant for searching within the hours of business, the house, warehouse, or other place of any such person so charged as aforesaid; and if the occupier thereof shall on request to him made to open the same by any peace officer authorised to search there by warrant of such justice refuse to open and permit the same to be searched, it shall be lawful for such peace officer to break open any such house, warehouse, or other place, within the hours of business, and to search as he shall think fit therein for the goods suspected to be there, doing no wilful damage; and no person shall oppose or hinder any such search; and if upon such search any of the goods shall be found, and the property of the owner shall be made out to the satisfaction of such justice by the oath, &c. of one witness, or confession, such justice shall thereupon cause the same to be forthwith restored to the owner.

Owners of goods unlawfully pawned may search for the same.

§ 14. If any goods shall be pawned or pledged for securing any money lent thereon, not exceeding in the whole the principal sum of 10*l.* and the profit thereof, and if within one year after the pawning thereof, (proof having been made on oath, &c. by

Pawnbrokers refusing to deliver up goods pawned.

39 & 40 G.3. c.99. one witness, and by producing the note or memorandum directed to be given by this act as aforesaid, before any such justice, of the pawning of such goods within the said space of one year, or one year and three months, as the case may be,) any such pawner who was the real owner of such goods at the time of the pawning thereof shall tender to the person who lent on security of the said goods the principal money borrowed thereon, and profit according to the rates by this act established; and if the person who took the goods in pawn shall thereupon, without reasonable cause, neglect or refuse to deliver back the goods so pawned for any sum not exceeding the said principal sum of 10*l.* to the person who borrowed the money thereon, in such case, on oath thereof made by the pawner, his executors, administrators, or assigns, or some other credible person, any justice of the place where the person who took such pawn shall dwell, on the application of the borrower, his executors, &c. shall cause such person to come before him, and shall examine on oath, &c. the parties themselves, and such other credible persons as shall appear before him touching the premises; and if tender of the principal money due and all profit thereon shall be proved by oath to have been made within the said space of one year, or one year and three months, as the case may be; then on payment by the borrower, his executors, &c. of such principal money and the profit due thereon as aforesaid to the lender, his executors, &c. and in case the lender, &c. shall refuse to accept thereof on tender before such justice, he shall thereupon, by order under his hand, direct the goods so pawned forthwith to be delivered to the pawner, his executors, &c.; and if the lender of any sum not exceeding in the whole 10*l.* his executors, &c. shall neglect or refuse to deliver up or make satisfaction for such goods as aforesaid as such justice shall order, then he shall commit the party refusing to the house of correction, or some other public prison for the county, &c. or place, until he shall deliver up the said goods according to the order of such justice, or make satisfaction for the value thereof to the party entitled to the redemption. See stat. 30 *G.* 2. *c.* 24. § 10.

Persons producing notes or memorandums deemed the owners.

§ 15. And to prevent inconveniences to pawnbrokers from several different persons claiming a property in the same goods, it is enacted that the person who shall produce such note or memorandum as aforesaid, and require a delivery of the goods mentioned therein, shall be deemed, so far as concerns the person who has the goods in pledge, the owner; and such pawnbroker, after receiving satisfaction respecting principal and profit as aforesaid, shall deliver such goods to the person producing such note or memorandum, and he shall be indemnified; unless he shall have had previous notice from the real owner not to deliver such goods to the person producing such note, &c.; or notice that the same are suspected to have been fraudulently or feloniously taken or obtained; and unless the real owner proceed in manner hereinafter mentioned for redeeming goods pledged, where such note or memorandum hath been lost, mislaid, destroyed, or fraudulently obtained from the owner thereof.

Where notes, &c. are lost, a copy to be delivered.

§ 16. In case any pawnbroker shall have had such previous notice as aforesaid, or in case any such note or memorandum shall be lost, mislaid, destroyed, or fraudulently obtained from

the owner, and the goods mentioned therein shall remain unredeemed, the broker with whom such goods were pledged shall, at the request of any person who shall represent himself as the owner thereof deliver to such person a copy of such note or memorandum, with the form of an affidavit of the particular circumstances attending the case written thereon, as the same shall be stated to him by the party applying; for which copy and affidavit, in case the money lent shall not exceed *5s.*, the broker shall receive one halfpenny, and if above *5s.* and not exceeding *10s.* he shall receive *1d.*, and if above *10s.* he shall receive the like sum as he is entitled to take on giving the original note or memorandum, to be paid by the person applying: and the person having obtained such copy and form of an affidavit shall thereupon prove his property in or right to such goods to the satisfaction of some justice, and also verify on oath the truth of the particular circumstances attending the case mentioned in such affidavit; the caption of such oath to be authenticated by the hand-writing of such justice; whereupon the broker shall suffer the person proving such property to redeem such goods, on leaving such copy of the said note or memorandum and the said affidavit with such broker. 39 & 40 G. 3. c. 99.

§ 17. And all pawned goods shall be deemed forfeited, and may be sold at the expiration of one year from the time of pawning the same, exclusive of the day on which pawned, and where the sum lent thereon shall be above *10s.* and not exceeding *10l.* shall be sold by public auction, but not otherwise, by the broker; and the same shall be exposed to public view, and a catalogue thereof published, containing the name and abode of the pawnbroker, and the month the goods were received in pawn, and the number of the pledge, and an advertisement giving notice of such sale, and containing the name and abode of such broker, and the month the goods were received in pawn, shall be inserted on two several days in some public newspaper, two days at least before the first day of sale, and the goods pledged shall be inserted in the catalogue separate, on pain of forfeiting to the owner not exceeding *10l.*, nor less than *40s.* See stat. 30 *G.* 2. *c.* 24. § 11.

Pawned goods may be sold at the end of one year.

Walter v. *Smith*, *H.* 2 *G.* 4. 5 *B.* & *A.* 439. Trover for a gold watch, a watch key, and two gold seals. Plea, not guilty. At the trial before *Abbott* C. J., at the *London* sittings after last *Mich.* term, it appeared that the plaintiff, on the 22d of *January*, 1820, had pledged the articles mentioned in the declaration, with the defendant, who was a pawnbroker, resident at *Bristol*, and that the plaintiff did not require the defendant to return them until after the expiration of one year and a day from the time they were pledged. And the defendant then refused to return them, asserting that they had become forfeited in consequence of the year having expired. The plaintiff at the time of the demand, tendered to the defendant the amount of the principal and interest due in respect of the money advanced. At the time when the demand was made, the articles pledged remained in the possession of the defendant. They were subsequently sold by auction, and the defendant himself became the purchaser. At the trial, the Ld. Ch. Justice was of opinion, that under these circumstances, the plaintiff was entitled to recover; the act of the 39 & 40 *G.* 3. *c.* 99., not vesting the property absolutely in the pawnbroker after

A pawnbroker has no right to sell unredeemed pledges after the expiration of a year from the time the goods were pledged, if the original owner tender him the principal and interest due.

Walter v. Smith.

the expiration of a year and a day, but only giving him a power to sell, in order to reimburse himself his principal and interest. The jury found a verdict for the plaintiff. And, on motion for a new trial, it was contended, that by stat. 39 & 40 *G.* 3. *c.* 99. § 17., the property in the unredeemed pledges, after the expiration of the time mentioned in the statute, vested in the pawnee. That section prescribes, that all goods which shall be pawned or pledged, shall be deemed *forfeited*, and may be sold at the expiration of one whole year, exclusive of the day whereon the goods and chattels were so pawned as aforesaid; and that all goods and chattels so forfeited, of a certain value therein mentioned, shall be sold by public auction. Now, in order to give effect to the word "forfeited," the original owner must be taken to have absolutely lost his right to the goods. § 19. (*post*, 661.) was relied upon as expressly reserving to the owner the liberty to redeem the goods upon the terms mentioned in that section, and therefore the legislature must have considered that the owner's right to redeem would have been otherwise extinguished. — *Abbott* C. J. I think that we cannot give to the word 'forfeited,' as used in this act of parliament, the effect contended for by the defendant. It is argued that its import is, that the party whose property is said to be forfeited, has absolutely lost all right to it. Now it is manifest, from the other provisions of this act of parliament, that, after the time for redeeming the property pledged is expired, the whole interest is not divested out of the original owner. If it were, the sale would be entirely for the benefit of the pawnbroker; but, by § 20. of the act, it is provided, "that with respect of goods pawned for more than 10*s*., if they shall be sold for more than the principal money and profit due thereon at the time of such sale, the overplus shall, by the pawnbroker, be paid on demand to the pawner, in case the demand shall be made within three years after such sale, the necessary costs and charges of such sale being first deducted." The pawnbroker, therefore, is only to derive from the sale so much as will reimburse him for his principal and interest, and the expences of the sale, and the overplus, if any, is to be returned to the owner. We cannot, therefore, consistently with this provision, give to the word *forfeited*, as used in § 17., the sense contended for on the part of the defendant. I am of opinion, that if the pledge be not redeemed at the expiration of a year and day, the pawnbroker has a right to expose it to sale as soon as he can, consistently with the provisions of the act; but if, at any time *before the sale has actually taken place*, the owner of the goods tender the principal and interest, and expences incurred, he has a right to his goods, and the pawnbroker is not injured; for the power of sale is allowed him merely to secure to him the money which he has advanced, together with the high rate of interest which the law allows to him in his character of pawnbroker. For these reasons I am of opinion, that no rule ought to be granted. — *Bayley* J. The object of the sale is, to enable the pawnbroker to reimburse himself for the amount of the principal money advanced, and the interest due thereon. And if, before any sale takes place, the party pledging pays the pawnbroker his principal and interest, and expences incurred; all the purposes of a sale are answered, and, consequently, the pawnbroker, in such a case, can have no

right to sell. The words "deemed forfeited and may be sold," mean not that the things pledged shall become the absolute property of the pawnbroker, but only that they shall be so far forfeited as that the pawnbroker may take steps towards a sale. I think, therefore, that the owner having tendered to the pawnbroker all the money that he would be entitled to raise by sale, he had no right to sell, and, consequently, that the plaintiff is entitled to recover. — *Holroyd* J. I think that, by § 17. the property is not to be considered forfeited to all intents and purposes, but only for the purpose of enabling a sale to be had, by which the pawnbroker may pay himself his principal, and the profit which the law allows him to make in lieu of interest. Now the sale is for the benefit of the owner as well as of the pawnbroker, for, if the property pledged sells for more than the principal and profit allowed to the pawnbroker in lieu of interest, he is accountable to the owner. The latter, therefore, continues to have an interest in the property, and must have a right to redeem it, by paying to the pawnbroker all that he would be entitled to derive out of it by a sale. It is true, that by § 17. the goods are forfeited for the purpose of sale; but that purpose is fully answered by the pawnbroker's being paid the amount of what is due to him upon the pledge. In this case, a tender to that amount has been made to him, and therefore he had no right to put the owner to the burdensome and unnecessary expences of a sale. I think, therefore, that no rule ought to be granted. — *Best* J. The legislature never could have intended to use the word forfeited in § 17. of this act, in the sense which is contended for by the defendant. That word generally means, the taking away all right from one person, and transferring all right to another. The words are here, "that it shall be deemed forfeited, and may be sold." It is manifest, however, from the provisions of the act, that it is to be sold for the benefit of the person to whom it belongs, after securing to the pawnbroker his principal and interest; for the latter is directed to account to the original owner for the overplus, if any. It is clear, therefore, that the legislature did not intend wholly to transfer the interest of the original owner of the thing pawned to the pawnee; and, therefore, the word forfeited, as used in this section, cannot have the sense contended for. It would be absurd to hold, in this case, that the pawnbroker had a right to sell, for, by the sale, he could be entitled to no greater benefit than he would have received by accepting the sum tendered, which was the full amount of the principal and interest due. I think, therefore, that this rule ought not to be granted. R. R. (Walter v. Smith.)

Rawlinson v. *Pearson and others*, *M.* 2 *G.* 4. 5 *B.* & *A.* 124. A pawnbroker is a broker within stat. 5 *G.* 2. *c.* 30. § 39. and, therefore, subject to the bankrupt laws. A person who had formerly taken in goods upon pledge, but had ceased to do so, still continuing to sell the unredeemed pledges, thereby carries on the trade of a pawnbroker, and is subject to the bankrupt laws. (A pawnbroker is subject to the bankrupt laws.)

By stat. 5 *G.* 4. *c.* 107. § 1. After reciting "whereas several of the pensioners of the royal hospital for soldiers at *Chelsea*, and other persons, have at various times pawned or illegally disposed of clothes, linen, stores, and other goods delivered to them to wear or use, and it is expedient to prevent the unlawful pawning and disposing of the like goods in future," it is enacted, "that (5 G. 4. c. 107. Penalty on persons pawning or receiving in pawn clothes or other articles, marked '*Chel*.)

5 G.4. c.107.

"...sea Hospital,' or defacing the marks, 10*l.*

the commissioners of the said royal hospital and their successors shall and may, and they are hereby authorised and empowered to cause the clothes, linen, stores, and other articles belonging to the said hospital, capable of being marked, to be from time to time marked, stamped, or branded with the words '*Chelsea* hospital,' and if any pensioner or other person or persons shall pawn, sell, or illegally dispose of, or if any pawnbroker or other person or persons shall take in pawn, buy, exchange, or receive any clothes, linen, or other goods marked, stamped, or branded as aforesaid, upon any account or pretence whatever (such mark, stamp or brand thereon to be considered and taken as sufficient evidence, without further proof, that the articles so marked, stamped, or branded, are the property of the said commissioners), or if any pensioner or other person or persons shall cause such mark or stamp, marks or stamps, to be taken out, obliterated, or defaced from any of the articles belonging to the said royal hospital, the person or persons so offending shall forfeit for every such offence the sum of 10*l.*, upon conviction thereof by the oath of one or more credible witness or witnesses before any one or more of H. M.'s justices of the peace of the county wherein the said offence or offences shall be committed; which penalty shall be levied by warrant under the hand and seal or hands and seals of the said justice or justices of the peace by distress and sale of the goods and chattels of the said offender or offenders, one moiety of which said penalty or penalties shall be paid to the informer or informers, and the other moiety shall go and be paid to the use of the said hospital; and in case any offender who shall be convicted as aforesaid of having pawned, sold, or illegally disposed of, or bought, exchanged, received, or taken in pawn any such clothes, linen, or other goods as aforesaid, or of having caused such mark or stamp, marks or stamps as aforesaid, to be taken out or defaced, shall not have (or shall at the time of conviction declare that he or she has not) sufficient goods and chattels whereon distress may be made to the value of the said penalty or penalties recovered against him or her for such offence or offences; or in case it shall be considered by the justice or justices before whom such offender shall be convicted, that the offender so convicted is likely to abscond before the said penalty or penalties can be levied by distress, then and in every such case such justice or justices of the peace shall and may, by warrant under his or their hand and seal or hands and seals, commit the offender to the common gaol of the county where such offence or offences shall be committed, there to remain without bail or mainprize for the space of three calendar months, or until the said penalty or penalties shall be paid."

How such penalty shall be levied and applied.

39 & 40 G. 3. c. 99.

Certain goods to be sold separately from other goods.

By stat. 39 & 40 *G.* 3. *c.* 99. § 18. Provided that all pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, which shall be sold by public auction, (as directed by the act in cases of other pawns,) shall be sold by themselves and without any other goods being sold at such sale, four times only in every year; (viz.) on the first *Monday* in the months of *January*, *April*, *July*, and *October* yearly, and on the following days, if the sale shall exceed one day, and at no other time; and the auctioneer shall cause the same to be exposed to public view,

and catalogues thereof to be published, and an advertisement giving notice of such sale, and containing the name of the pawnbroker, which shall be inserted in some public newspaper two several days, three days at the least before the first day of sale, upon pain of forfeiting to the owner of such goods any sum not exceeding 5*l.* nor less than 40*s.*

39 & 40 G. 3. c. 99.

Unless notice be given before the end of the year.

§ 19. But if any person entitled to redeem goods in pledge shall, before the end of the said year, give notice in writing, or in the presence of one witness, to the person who has the same in pawn, or leave such notice at his usual place of abode, not to sell such goods at the end of the said year, the same shall not be sold until three calendar months from the end of the said year, during which three months the owner shall have liberty to redeem the said goods on the terms aforesaid.

An account of goods sold to be entered in a book.

§ 20. Every pawnbroker shall enter into a book to be kept for that purpose a just account of the sale of such goods, expressing the day of the month when pledged, the name of the person pledging, and the day when and the money for which the same were sold, together with the name and abode of the auctioneer; and if such goods are sold for upwards of 10*s.*, or for more than is due thereon, the overplus shall be paid on demand to the person by whom or on whose account such goods were pawned, his executors, &c. if such demand be made within three years after such sale, the necessary costs and charges of such sale being first deducted; and the person who pawned such goods, his executors, &c. or for whom they were so pawned, shall, for his satisfaction, be permitted to inspect the entry made of such sale, paying for such inspection 1*d.*, and no more. And if any person shall refuse the person who pawned such goods to inspect such entry, or if an executor, administrator, or assignee, at such time producing his letters testamentary, letters of administration or assignment; or if the goods were sold for more than the sum entered in such book; or if such person shall not have made such entry; or shall not have *bonâ fide* according to this act sold the goods; or shall refuse to pay such overplus on demand as aforesaid; he shall forfeit 10*l.* and treble the sum such goods were originally pawned for, to the person by whom or on whose account they were pawned; to be levied by distress by warrant of two justices where the offence shall be committed. (See also stat. 30 *G.* 2. *c.* 24. § 12.)

Pawnbroker not to purchase goods whilst they are under pawn.

§ 21. No person having goods in pledge shall, either by himself or other person, purchase any such goods during the time they shall remain in his custody as such pledge (except at such public auction); nor shall suffer the same to be redeemed with a view or intention of purchasing thereof; nor make any contract with any person offering to pledge or pledging the same, with the owner of the pledge, for the purchase, sale, or disposition of the said goods, before the end of one year from the time of pledging the same; nor shall purchase, receive, or take any goods in pledge from any person who shall appear to be under the age of twelve years or to be intoxicated with liquor; or purchase or take in pawn, pledge, or exchange the note or memorandum aforesaid of any other pawnbroker; nor buy any goods in the course of his trade before eight o'clock in the morning, nor after seven in the evening; nor employ any servant or apprentice, or other person under sixteen years of age, to take in any pledge; nor receive

Time for taking in pawns limited; and the age of the persons employed.

39 & 40 G.3. c.99.

any goods by way of pawn, pledge, or exchange, before eight in the morning, nor after eight in the evening, between *Michaelmas-day* and *Lady-day*; or before seven in the morning and after nine in the evening the remainder of the year, except only until eleven on the evenings of *Saturdays* throughout the year, and the evenings preceding *Good Friday* and *Christmas-day*, and every fast, or thanksgiving day appointed by his majesty; on which days, and on *Sundays*, no person shall carry on the trade of a pawnbroker.

Selling goods before the time limited, or the same being damaged.

§ 24. And if it shall appear, or be proved upon oath before a justice, that the goods pawned as aforesaid have been sold before the time limited, or have been embezzled, or lost, or are become of less value then when pawned, through the neglect or wilful misbehaviour of the person to whom they were pawned, his executors, &c. agents, or servants, such justice shall award a reasonable satisfaction to the owner in respect of such damage; and the sum so awarded, in case the same shall not amount to the principal and profit due to such broker, his executors, &c. shall be deducted thereout, and it shall be sufficient for the pawner, his executors, &c. to pay or tender the balance, and upon so doing such justice shall proceed as if the pawner, &c. had paid or tendered the whole money due for principal and profit as aforesaid: And if such satisfaction to be allowed shall be equal to or exceed the principal and profit as aforesaid, then such broker, his executors, &c. shall deliver the goods so pledged to the owner, without being paid any thing for principal or profit; and shall also pay such excess (if any) on penalty of 10*l.*, to be recovered in manner hereafter mentioned. See also stat. 30 *G.* 2. *c.* 24. § 5.

Penalty.

Pawnbrokers to produce their books.

§ 25. And where such justice shall think the production of any book, note, voucher, memorandum, duplicate, or other paper necessary, which shall or ought to be in the hands, custody, or power of any broker, he shall summon him to attend with the same, which he is required to produce in the state the same was made at the time the pawn was received, without any alteration, erasement, or obliteration whatsoever; and in case he shall neglect or refuse to attend, or to produce the same in its true and perfect state, he shall, unless he shew good cause to the satisfaction of such justice, forfeit not exceeding 10*l.* nor less than 5*l.*, to be levied as hereafter mentioned.

Information to be given within twelve months.

§ 27. But no pawnbroker shall be liable to any prosecution before any justice, unless information be given within twelve calendar months next after the offence was committed; and such prosecution shall be before some neighbouring justice, where the offence shall have been committed, except in *London*.

Churchwardens to prosecute.

§ 28. And the churchwardens and overseers of the parish or place where any offence shall be supposed to have been committed, or some one of them, at the discretion of such justice, on having notice from him for that purpose, shall prosecute such offender at the expence of such parish or place.

Not to extend to lending money at 5*l.* per cent.

§ 30. But nothing herein shall extend to any person who shall lend money upon pawn or pledge at the rate of 5*l.* *per cent.* interest, without taking any greater profit for the loan thereof.

Certain convicted persons not to prosecute.

§ 29. And no person who has been convicted of any fraud, or of obtaining money under false pretences, or of any felony,

shall prosecute or inform against any person for any offence against this act. 39 & 40 G.3. c.99.

§ 31. And all the provisions of this act shall extend to, and include the executors, administrators, and assigns, of every deceased pawnbroker, as if he were living, except that no such executor or administrator shall be answerable for any penalty personally, or out of his own estate, unless forfeited by his own act. To extend to executors, &c.

§ 26. In case any pawnbroker shall offend against this act in neglecting to make in a fair and regular manner in such book as aforesaid any such entry as is hereby required, he shall forfeit for each offence not exceeding 10*l.*, as to such justice shall seem reasonable and fit; and for every other offence, where no other penalty is imposed, not more than 10*l.* nor less than 40*s.*; the same respectively to be levied by distress and sale, half to the person complaining, and half to the poor, if not herein otherwise disposed of and applied. Recovery and application of penalties.

Rex v. *Beard,* 12 *East,* 672. This was an application for a mandamus to be issued to the defendant, a magistrate of *Lancashire,* commanding him to hear and determine an information exhibited before him by *J. S.* against *Robert Rawlinson,* a pawnbroker, for certain trespasses and contempts against the late pawnbrokers' act of the 39 & 40 *G.* 3. *c.* 99. The information laid before the magistrate on the 4th of *June,* 1810, charged that *Rawlinson,* a pawnbroker at *Manchester,* unlawfully demanded, received, and took from one *J. S.* in the name of *J. D.*, on redeeming the pledge after-mentioned, 6*d.* by way of profit for the loan of 3*s.*, the same being an intermediate sum exceeding 2*s.* 6*d.* and not exceeding 40*s.* which on the 15th of *Dec.* 1809 was lent by *Rawlinson* to *J. S.* on a pledge of two spoons, the said pledge not having remained in pawn any time exceeding six calendar months, being more than at the rate of 4*d.* for the loan of 20*s.* by the calendar month, contrary to the statute; and then claimed a penalty of not less than 40*s.* nor more than 10*l.* The question was, whether this were a case for a summary conviction in a penalty within the statute; the magistrate thought it was not, and refused to proceed upon the information. The 2d and 3d sections of the said act were cited. No penalty is given by these clauses, but penalties are given by several clauses of the act for specific offences, and the act also contains many regulating clauses. § 26. also was cited. — Ld. *Ellenborough* C. J. It is prohibited by the act to take more than the stipulated rate of profit; and, therefore, the taking more is an offence against the act; and as no particular penalty is provided for that transgression, it falls within the general words of the 26th clause. *Per Cur.* R. A.

By stat. 30 *G.* 2. *c.* 24. several provisions were enacted respecting pawnbrokers, which were comprised in the sections of this act, commencing § 3., and concluding with § 13. The several cases therein provided for, excepting in § 13. are, with variations as to penalties and forfeitures, repeated nearly *verbatim* in the various sections of stat. 39 & 40 *G.* 3. *c.* 99. And it is, therefore, unnecessary to insert here the former act, though it be not expressly repealed by the latter; but references are made to the corresponding sections. 30 G. 2. c. 24.

30 G. 2. c. 24. By stat. 30 *G*. 2. *c*. 24. § 16. Any justice unto whom complaint upon oath shall be made of any offence committed against *this* act shall issue his warrant for bringing before him, or some other justice of such place, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction: and if it shall appear upon oath, to the satisfaction of such justice, that any person within his jurisdiction can give material evidence on behalf of the prosecutor, or of the person accused, and who will not voluntarily appear; he shall issue his summons to convene him to give his evidence; and if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served upon him) he shall issue his warrant to bring such witness before him; and on his appearance, if he shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the public prison for any time not exceeding three months; and if on such examination the justice shall deem the evidence of any such witness to be material, he may bind over such witness, unless a feme-covert, or under the age of twenty-one years, by recognizance in a reasonable penalty to appear and give evidence at the next sessions or assizes.

39 & 40 G. 3. c. 99. Inhabitants may be witnesses. And by stat. 39 & 40 *G*. 3. *c*. 99. § 33. In all proceedings on this act, any person may be a witness, notwithstanding his being an inhabitant of the place wherein the offence shall have been committed.

30 G. 2. c. 24. No fees to be taken. By stat. 30 *G*. 2. *c*. 24. § 13. No fee or gratuity shall be taken for any summons or warrant granted by any justice or justices, in pursuance of this act, so far as the same relates to goods pawned, pledged, taken in exchange, or unlawfully disposed of.

39 & 40 G. 3. c. 99. By stat. 39 & 40 *G*. 3. *c*. 99. § 34. The justice before whom any person shall be convicted shall cause the conviction to be drawn up in the form or to the effect following: (*viz.*)

Conviction. ——— to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of his majesty's reign,* A. B. *is convicted before* ——— *of his majesty's justices of the peace for the said county of* ——— [or, *for the* ——— *riding or division of the said county of* ———, or, *for the city, liberty, or town of* ———, as the case shall happen to be] *for* ———, *and the said* ——— *do adjudge him* [or, *her*] *to pay and forfeit for the same the sum of* ———. *Given under* ——— *the* ——— *day and year aforesaid.*

The same to be written upon parchment, and transmitted to the next sessions, to be filed amongst the records; and if any person shall appeal to the said sessions, the justices there shall, upon receiving the said conviction, proceed to hear and determine the matter.

Certiorari. And no *certiorari* shall be granted, to remove any proceedings on this act.

Appeal. § 35. If any person convicted of any offence punishable by this act shall think himself aggrieved by the judgment of the justice before whom he shall have been convicted, he may appeal to the next general or quarter session of the peace for the county, &c.

39 & 40 G. 3. c. 99.

and the execution of the judgment shall in such case be suspended, the person convicted entering into a recognizance at the time of the conviction, with two sureties in double the sum he shall have been adjudged to pay, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of and pay such costs as shall be awarded at the said sessions; and the justices are empowered to hear and finally determine the matter of appeal, and to award such costs as shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged to be forfeited, together with such costs as the court shall award, or, in default thereof, shall suffer the pains and penalties by this act inflicted upon persons respectively, who shall neglect to pay or shall not pay the forfeitures hereby imposed.

§ 32. Persons sued for any thing done on this act shall have double costs.

Previous pawnbroker's act.

[Note. — The general act relating to pawnbrokers prior to stat. 39 & 40 *G.* 3. *c.* 99. was stat. 36 *G.* 3. *c.* 87. which was repealed by the subsequent act.]

Peace. See Surety for the Peace, Vol. V.

Peas Stealing. See Turnips, Vol. V.

Pedlars. See Hawkers, Vol. II.

Peers.

[1 Ed. 6. c. 12.]

Not conservators of the peace.

DUKES, Earls, and Barons, are not conservators of the peace at common law; and have no more power as such than mere private persons. 2 *Haw. c.* 8. § 1.

Sureties of the peace against them.

The safest way of proceeding against a peer for sureties of the peace or good behaviour, is by complaint to the court of chancery or king's bench. 1 *Haw. c.* 60. § 5. 1 *Burr.* 631.

Privileged from arrest.

By the common law, peers of the realm of *England* and peeresses, whether by birth or marriage, are constantly privileged from arrest in civil suits. And this privilege is extended by the act of union with *Scotland*, to *Scotch* peers and peeresses; and by the act of union with *Ireland*, to *Irish* peers and peeresses.

What attachments.

They are not liable to be attached for the non-payment of money, pursuant to an order of *nisi prius*, which has been made a rule of court. 7 *T. R.* 171.

But they are not exempted from attachments for not obeying the process of the court; 1 *Burr.* 631.; nor does the privilege extend to peeresses by marriage, if they afterwards intermarry with commoners.

Trial of peers.

A nobleman must be tried by his peers; but this is to be understood only at the suit of the king, upon an indictment of high

treason, petit treason, felony, or misprision thereof; but in case of a *præmunire*, riot, or the like, and generally for all other crimes out of parliament, (unless otherwise specially provided for by statute, as it is in many instances,) though it be at the suit of the king, he shall not be tried by his peers, but by the freeholders of the county. 3 *Inst.* 30. 2 *Haw. c.* 44. § 12. *et seq.*

Whether they may be outlawed.

Process of outlawry lies against a peer, if he be indicted, and appears not, and cannot be taken: otherwise he might take advantage of his own contumacy. 3 *Inst.* 31.

1 Ed. 6. c. 12. Whether they shall be burnt in the hand.

By 1 *Ed.* 6. *c.* 12. § 14. Peers shall have the benefit of clergy for the first offence of felony, without being burned in the hand.

Evidence.

A peer produced as a witness ought to be sworn. 3 *Keb.* 631.

But this is to be understood of criminal prosecutions and not civil actions.

And see tit. Parliament.

Perfumery.

THE duties on perfumery are repealed by stat. 39 & 40 *G.* 3. *c.* 69.

Perjury and Subornation.

§ I. *Of Perjury and Subornation by the Common Law.*

II. *Of Perjury and Subornation by Stat.* 5 El. c. 9.

III. *Of Matters common to them both.*

[7 & 8 W. 3. c. 34.—8 G. 1. c. 6.—2 G. 2. c. 25.—9 G. 2. c. 18. —22 G. 2. c. 46.—23 G. 2. c. 11.]

§ I. Of Perjury and Subornation by the Common Law.

Perjury at the common law.

PERJURY by the common law seemeth to be *a wilful false oath, by one who being lawfully required to depose the truth in any judicial proceeding swears absolutely in a matter material to the point in question, whether he be believed or not.* 1 *Haw. c.* 69. § 1. 3 *Inst.* 164.

Must be wilful.

Wilful.] The false oath must be wilful and proved to be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprise or inadvertency, or a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is of all crimes whatsoever the most infamous and detestable. 1 *Haw. c.* 69. § 2.

False.] It is said not to be material, whether the fact which is sworn be in itself true or false; for however the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false; inasmuch as he wilfully swears that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition, which any stranger might make as well as he. 1 *Haw. c.* 69. § 6. 2 *Russ.* 1754. [But it is otherwise on stat. 5 *El. c.* 9.]

Swearing the truth not knowing it to be so, is perjury.

So in *Pedley's* case, 1 *Leach*, 327, it was holden by Ld. *Mansfield* C. J. that a man may be indicted for perjury in swearing that he *believes* a fact to be true, which he must *know* to be false.

It is further said, that upon this question being agitated in the Court of C. P. all the judges were unanimous, that *belief* was to be considered as an absolute term, and that an indictment might be supported upon such a statement. 1 *Haw. c.* 69. p. 88. *note* (*a*), *edit. of* 1795., *and* 2 *Russ.* 1753.

Being lawfully required.] It seemeth clear, that no oaths whatsoever, taken before persons acting merely in a private capacity, or before those who take upon them to administer oaths of a public nature without legal authority, or before those who are legally authorised to administer some kinds of oaths, but not those which happen to be taken before them or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void, — can amount to perjuries, but are altogether idle and of no force. 1 *Haw. c.* 69. § 4. See also, 4 *Bl. Com.* 137., *and title* Oaths, *ante.*

Oaths administered by improper persons or without legal authority, not perjury.

In any judicial proceeding.] For though an oath be given by him that hath lawful authority, and the same broken, yet if it be not in a judicial proceeding, it is not perjury, because such oaths are general and extrajudicial, but it serves for aggravation of the offence. Such are, general oaths given to officers or ministers of justice, the oath of fealty and allegiance, and such like. Thus, if an officer commit extortion, it is against his general oath, but yet not perjury, because not in a judicial proceeding: but when he is charged with extortion, the breach of his oath may serve for aggravation. 3 *Inst.* 166.

Must be taken in a judicial proceeding to make it perjury.

To found an indictment for perjury, the requisite circumstances are these; the oath must be taken in a judicial proceeding, before a competent jurisdiction; and it must be material to the question depending, and false. *Per* Ld. *Mansfield* C. J., *in Rex* v. *Aylett*, 1 *T. R.* 69.

Therefore where an oath is administered by a person that hath lawful authority to tender the same, and it is afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor punishable by the common law. 3 *Inst.* 166.

Swears absolutely.] For the deposition must be direct and absolute; and not, as he thinketh, or remembereth, or believeth, or the like. 3 *Inst.* 166. And see *Pedley's case*, 1 *Leach*, 325.

Swearing absolutely.

In a matter material to the point in question.] For if it be not material, then though it be false, yet it is no perjury, because it concerneth not the point in issue, and therefore in effect it is extrajudicial. 3 *Inst.* 167.

Must be material to the point in question.

But it is not necessary that it appear *to what degree* the point in which a man is perjured was material to the issue; for if it be but circumstantially material, it will be perjury. 1 Ld. *Raym.* 258.

Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon; for in the nature of the thing an evidence may be very material, and yet it may not be full enough to prove directly the point in question. 2 Ld. *Raym.* 889.

Not material whether believed or not.

Whether he be believed or not.] It hath been holden not to be material upon an indictment of perjury at common law whether the false oath were at all credited, or whether the party in whose prejudice it was intended were in the event any way aggrieved by it or not; insomuch as this is not a prosecution grounded on the damage of the party, but on the abuse of public justice. 1 *Haw.* c. 69. § 9.

False oath, indictable in some cases, though not assignable as perjury.

In some cases, where a false oath has been taken, the party may be prosecuted by indictment at common law, though the offence may not amount to perjury. Thus it appears to have been holden, that any person making or knowingly using any false affidavit taken abroad, (though a perjury could not be assigned on it here,) in order to mislead our courts of justice, is punishable by indictment as for a misdemeanor: and Ld. *Ellenborough* C. J. said, "that he had not the least doubt, that any person making use of a false instrument in order to prevent the course of justice was guilty of an offence punishable by indictment." *O'Mealy* v. *Newell*, 8 *East*, 364. 2 *Russ.* 1759.

Subornation at common law.

Subornation of perjury, by the common law, seems to be *an offence, in procuring a man to take a false oath, amounting to perjury, who actually taketh such oath.* 2 *Haw.* c. 69. § 9.

But it seemeth clear, that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain, that he is liable to be punished not only by fine but also by infamous corporal punishment. 2 *Haw.* c. 69. § 3.

Punishment of perjury and subornation by the common law.

The punishment of perjury, and subornation of perjury by the common law, is restrained by stat. 5 *El.* hereafter following; that it shall not be less than is inflicted by that statute. See 4 *Blac. Com.* 138.

Power of justices of the peace therein.

Mr. *Hawkins* says, it hath been of late settled, that justices of the peace have no jurisdiction over perjury at the common law; the principal reason of which resolution, he says, as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass*, (in the commission,) in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only, or at most to extend to such other offences only, as have a direct and immediate tendency to cause such breaches of the peace; as libels and such like, which on this account have been adjudged indictable before justices of the peace. 2 *Haw.* c. 8. § 38.

And in the case of *Rex* v. *Bainton*, 2 *Str.* 1088. an indictment at the quarter sessions for perjury at the common law was quashed for want of jurisdiction; and was said to have been done so about three years before, in the case of *Rex* and *Westiness*. *Et vide Reg.* v. *Yarrington*, 1 *Salk.* 406.

§ II. Of Perjury and Subornation by *Stat.* 5 *El.* c. 9.

As to subornation of perjury, in the first place, by stat. 5 *Eliz.* c. 9. [made perpetual by stats. 29 *Eliz.* c. 5. § 2. and 21 *Jac.* 1. c. 28. § 8.] it is enacted (§ 3.) "that all and every such person and persons which shall unlawfully and corruptly procure any witness or witnesses by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever now depending, or which hereafter shall depend in suit and variance, by any writ, action, bill, complaint or information, in anywise touching or concerning any lands, tenements or hereditaments, or any goods, chattels, debts or damages, in any of the courts, viz. the king's courts of Chancery, the Star Chamber, the Whitehall, or elsewhere within any of the king's dominions of *England* or *Wales*, or the *Marches* of the same, where any person or persons have, or from thenceforth should have authority by virtue of the king's commission, patent, or writ, to hold plea of land, or to examine, hear, or determine any title of lands, or any matter or witnesses concerning the title, right or interest of any lands, tenements, or hereditaments, or in any of the queen's majesty's courts of record, or in any leet, view of frank-pledge, or law day, ancient demean court, hundred court, court-baron, or in the court or courts of the Stannary in the counties of *Devon* and *Cornwall*; or shall likewise unlawfully and corruptly procure or suborn any witness or witnesses, which shall be sworn to testify *in perpetuam rei memoriam*, that then every such offender or offenders shall for his, her, or their said offence, being thereof lawfully convicted or attainted, lose and forfeit the sum of forty pounds."

5 El. c. 9. Procuring any witness to commit perjury in any matter in suit, by writ, &c. concerning any lands, goods, &c. or when sworn *in perpetuam rei memoriam* punishable by forfeiture of 40l.

§ 4. And "if it happen any such offender or offenders, so being convicted or attainted as aforesaid, not to have any goods or chattels, lands or tenements, to the value of forty pounds, that then every such person so being convict or attainted of any of the offences aforesaid, shall for his or their said offence suffer imprisonment by the space of one half year (*a*), without bail or mainprize, and to stand upon the pillory (*b*) the space of one whole hour, in some market town, next adjoining to the place where the offence was committed, in open market there, or in the market town itself where the offence was committed."

Such offender not having goods, &c. to the value of 40l. to suffer imprisonment and stand in the pillory.

§ 5. And, "that no person or persons, being so convicted or attainted, be from thenceforth received as a witness to be deposed and sworn in any court of record (within *England*, *Wales*, or the *Marches* of the same,) until such time as the judgment given against the said person or persons shall be reversed by attaint or otherwise; and that upon every such reversal, the parties grieved to recover his or their damages against all and every such person and persons as did procure the said judgment so reversed to be first given against them or any of them, by action or actions, to be sued upon his or their case or cases, according to the course of the common laws of this realm."

Persons convicted not to be received as witnesses until judgment reversed.

(*a*) See stat. 3 *G.* 4. c. 114. title Judgment, *ante*, p. 95.
(*b*) See stat. 56 *G.* 3. c. 138. title Pillory, &c. Vol. III.

5 El. c. 9. Persons committing perjury to forfeit 20l. and to be imprisoned for six months; and their oath not to be received in any court of record until judgment reversed.

§ 6. Enacts, "that if any person or persons, either by the subornation, unlawful procurement, sinister persuasion or means of any others, or by their own act, consent, or agreement, wilfully and corruptly commit any manner of wilful perjury, by his or their deposition in any of the courts before mentioned, or being examined *ad perpetuam rei memoriam*, that then every person or persons so offending, and being thereof duly convict or attainted by the laws of this realm, shall for his or their said offence lose and forfeit twenty pounds, and to have imprisonment by the space of six months without bail or mainprize; and the oath of such person or persons so offending from thenceforth not to be received in any court of record within this realm of *England* or *Wales*, or the *Marches* of the same, until such time as the judgment given against the said person or persons shall be reversed by attaint or otherwise: and that upon every such reversal the parties grieved to recover his or their damages against all and every such person and persons as did procure the said judgment so reversed to be given against them or any of them, by action or actions to be sued upon his or their case or cases, according to the course of the common laws of this realm."

And if such offenders have not goods to the value of 20l. they are to be set in the pillory and have their ears nailed, and to be disabled from being witnesses until judgment reversed.

§ 7. And "if it happen the said offender or offenders so offending not to have any goods or chattels to the value of twenty pounds, that then he or they to be set on the pillory (*a*), in some market-place within the shire, city, or borough, where the said offence shall be committed, by the sheriff or his ministers, if it shall fortune to be without any city or town corporate; and if it happen to be within any such city or town corporate, then by the said head officer or officers of such city or town corporate, or by his or their ministers, and there to have both his ears nailed, and from thenceforth to be discredited and disabled for ever to be sworn in any of the courts of record aforesaid, until such time as the judgment shall be reversed, and thereupon to recover his damages in manner and form before mentioned."

Disposal of forfeitures.

§ 8. One moiety of the said forfeitures shall be to the Queen, and the other moiety to such person as shall be grieved, hindered, or molested by reason of any of the offences before mentioned, that will sue for the same, &c.

Trial of offences.

§ 9. Enacts, that as well the judge and judges of every such of the said courts where any such suit shall be, and whereupon any such perjury shall be committed, as also the justices of assize and gaol delivery, and justices of peace at their quarter sessions, both within the liberties and without, may inquire of, hear and determine all offences against the said act.

The act is not to extend to spiritual courts.

§ 11. Provides that this act shall no way extend to any spiritual or ecclesiastical court, but that every such offender, as shall offend in form as aforesaid, shall be punished by such usual and ordinary laws as are used in the said court.

Nor to restrain other punishment of perjury.

And § 13. also provides, that this statute shall not restrain the authority of any judge having absolute power to punish perjury before the making thereof; but that every such judge may proceed in the punishment of all offences punishable before the making of the said statute, in such wise as they might have done and

(*a*) See stat. *56 G.3. c.*138. title Pillory, &c. and stat. *G.4. c.*114. *ante*, p.95.

used to do to all purposes, so that they set not on the offender less punishment than is contained in this act. 5 El. c. 9.

Any witness.] If the defendant perjureth himself in his answer, in the chancery, exchequer chamber, or the like, he is not punishable by this statute; for it extendeth but to witnesses. 3 *Inst.* 166. Witnesses.

But he is punishable for the same by indictment at the common law. *Rex* v. *Morris*, 3 *Burr.* 1189.

By any writ, action, bill, complaint, or information.] It hath been resolved that these words are to be extended to the latter clause concerning perjury, as well as to this concerning subornation; because it cannot well be intended, that the makers of the act, who inflict a greater penalty on subornation of perjury than on the perjury itself, should mean to extend the purvieu of the law in relation to what they esteemed the lesser crime, farther than in relation to that which they esteemed the greater. 1 *Haw.* c. 69. § 19. 5 *Rep.* 99 *a.*

But it is to be observed, that perjury or subornation in an action depending by *indictment* or criminal information, is not within this statute; but only in an action depending by *writ, action, bill, complaint, or information.* 3 *Inst.* 164.

Half to the party grieved.] It hath been collected from this clause, that no false oath is within the meaning of this statute, which doth not give some person a just cause of complaint: And upon this ground it hath been said, that he who swears a thing which is true, but not known by him to be so, is not within this statute; because, howsoever heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be said to give him a just cause of complaint, who would take advantage against another from his want of legal evidence to make out the justice of his cause. Also from the same ground it seemeth clearly to follow that no false oath can be within the statute, unless the party against whom it was sworn suffered some kind of disadvantage by it; for otherwise it cannot be said, that any one was grieved by it; And therefore, in every prosecution upon this statute, it must appear upon the trial that there was such a suit depending, wherein the party might be prejudiced in the manner supposed. 1 *Haw.* c. 69. § 23. 2 *Russ.* 1777. One moiety.

Either by subornation or otherwise.] It is not necessary to set forth in the indictment, whether the party took the false oath through the subornation of another, or without any such subornation, these words being only superfluity. 1 *Haw.* c. 69. § 18.

Wilfully and corruptly.] These words are necessary in an indictment or action on this statute, and cannot be supplied by adding *against the form of the statute*, or by concluding *and so a wilful and corrupt perjury did commit.* 1 *Haw.* c. 69. § 17.

An indictment for perjury cannot be maintained, where the supposed perjury depends on the construction of a deed; but the remedy is by a civil action, if the defendant acted inconsistently with the obligation entered into. *Rex* v. *Crespigny*, 1 *Esp.* 280. Not assignable on the construction of a deed.

Justices at their quarter sessions.] And one justice (Mr. *Dalton* says) may bind the offender over to the sessions. *Dalt.* c. 70.

But because the prosecution upon this statute is more difficult

than by indictment at the common law, offenders are seldom prosecuted upon this statute, especially at the sessions; and it seems generally the safer way to proceed by indictment at the common law at the assizes, or in the court of king's bench. *Vide* 2 *Russ.* 1775.

Shall not restrain.] From this it seemeth undoubtedly to follow, that the court of king's bench, &c. proceeding upon an indictment or information of perjury or subornation of perjury at the common law, may not only set a discretionary fine on the offender, but also condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. 1 *Haw.* c. 69. § 16.

§ III. Of matters common to them both.

23 G. 2. c. 11. Judges may direct prosecution for perjury.

By stat. 23 *G.* 2. *c.* 11. § 3. The judge of assize (sitting the court, or within 24 hours after,) may direct any witness, if there shall appear to him a reasonable cause, to be prosecuted for perjury; and may assign the party injured, or other person undertaking such prosecution, counsel, who are to do their duty *gratis*: and such prosecution so directed shall be carried on without any duty or fees whatsoever. And the clerk of assize, or other proper officer of the court, shall give *gratis* to the party injured, or prosecutor, a certificate of the same being directed, together with the names of the counsel assigned him; which certificate shall be sufficient proof of such prosecution being directed; provided that no such direction or certificate shall be given in evidence on the trial.

On prosecution for perjury, it shall be sufficient to set forth the substance of the offence.

§ 1. And in every information or indictment for wilful and corrupt *perjury*, it shall be sufficient to set forth the *substance* of the offence, and by what court, or before whom the oath was taken (averring such court or person to have a competent authority to administer the same), together with the proper averment or averments to falsify the matter wherein the perjury is assigned, without setting forth any part of the record or proceedings either in law or equity (other than as aforesaid), or the authority of the court or person before whom the perjury was committed.

Likewise on a prosecution for subornation.

§ 2. And in every information or indictment for *subornation* of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence, without setting forth any part of the record or proceedings, or the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed.

The provisions of this statute should be attended to in drawing indictments.

In *Rex* v. *Dowlin*, 5 *T. R.* 317. Ld. *Kenyon* C. J. said we have occasion to lament, in almost all the trials for perjury, that the prosecutor does not avail himself of this excellent law, which was passed to obviate difficulties in drawing indictments for this offence. In the case referred to, the commission at the Admiralty session had been unnecessarily set forth in the indictment, and it was admitted that where a prosecutor undertakes to set out in the indictment more of the proceedings than he need under this statute, he must set them forth correctly; but it was holden that the commission at the Admiralty session being set forth as directed to A, B, and C, and others not named, of which A, B, and C, amongst

others, should always be one, the Court must take it to mean, that if either of the persons named of the quorum were present, it would be sufficient. 2 *Russ.* 1780.

Insufficient indictment not quashed without pleading or demurrer.

The Court generally will not quash an indictment for a crime of so enormous a nature as perjury, for insufficiency in the caption or body of it, but will oblige the defendant either to plead or demur to it. 2 *Haw.* *c.* 25. § 146.

Plea of *auterfoits acquit.*

With respect to the plea of *auterfoits acquit* by a defendant who has been acquitted of an indictment for perjury, but not on the merits, it may be generally observed of such plea, that it is an established principle, that unless the first indictment were such as the defendant (or if for a felony the prisoner) might have been convicted upon by proof of the facts contained in the second indictment, an acquittal on the first indictment can be no bar to the second. *Rex* v. *Vandercom* and *Abbott*, *O. B. Jan.* 1796, 2 *East's P. C.* 519.

Evidence.

To convict a man of perjury, a probable evidence is not enough; but it must be a strong and clear evidence, and the witnesses must be more numerous than those on the side of the defendant; for otherwise it is only oath against oath. *Reg.* v. *Muscot,* 10 *Mod.* 194. *Rex* v. *Broughton*, 2 *Str.* 1229. 1 *Phill. Ev.* 140.

For there is this difference between a prosecution for perjury and a bare contest about property, that in the latter case the matter stands indifferent, and, therefore, a credible and probable witness shall turn the scale in favour of either party; but in the former, presumption is even to be made in favour of innocence, and the oath of the party will have a regard paid to it, until disproved. *Reg.* v. *Muscot,* 10 *Mod.* 194.

Though the contrary doctrine appears at one time to have prevailed, it is now well established that the party prejudiced by the perjury is a competent witness to prove the offence. And, though at one time it was considered necessary to shew that such party had satisfied the judgment in the suit in which the perjury was committed before he could be admitted as a witness, on the ground that he might possibly make use of a conviction for the purpose of obtaining relief in equity against the judgment; yet as it is now an established rule, that a court of equity will not grant relief on a conviction which proceeds on the evidence of the prosecutor, there can be no objection to his being admitted a witness. And even if the indictment proceed upon the stat. 5 *Eliz. c.* 9., which gives the prosecutor half the forfeiture incurred, it is conceived that, as in an action to recover his moiety he would be precluded from giving the conviction in evidence, there would be no objection to his competency. 2 *Russ.* 1791., *and the authorities there cited.* See also 1 *Phill. Ev.* 140.

2 G. 2. c. 25. Further punishment of perjury or subornation.

For the further punishment of perjury, or subornation of perjury, it is enacted by stat. 2 *G.* 2. *c.* 25. (made perpetual by stat. 9 *G.* 2. *c.* 18.), " that besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the court or judge, before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, according to the laws now in being, to order such person to be sent to some house of correction within the same county, for a time not exceeding seven years, there to be kept to hard labour (*a*) during all

(*a*) See also stat. 3 *G.* 4. *c.* 114. *ante,* title Offenders.

Transportation. the said time, or otherwise to be transported to some of H. M.'s plantations beyond the seas, for a term not exceeding seven years, as the court shall think most proper."

Certiorari. It seems that the court will not ordinarily at the prayer of the defendant grant a *certiorari* for the removal of an indictment of perjury; for such crime deserves all possible discountenance, and the *certiorari* might delay, if not wholly discourage the prosecution. 2 *Haw. c.* 27. § 28.

Perjured person not to be a juror or witness. A person convicted of perjury is disabled from being a juror. 2 *Haw. c.* 43. § 25. Or a witness. 2 *Haw. c.* 46. § 19. 2 *Russ.* 1798.

But a pardon will restore his competency; except in the case of a conviction for perjury, or subornation of perjury on stat. 5 *Eliz. c.* 9. § 5., which provides that the offender shall never be admitted to give evidence in courts of justice until the judgment be reversed; and therefore the king's pardon will not in such case make him a competent witness. 1 *Phill. Ev.* 140. 2 *Russ.* 1798.

False affirmations of Quakers. The false affirmation or declaration of any of the people called *Quakers*, made instead of an oath, will subject the party to the penalties of perjury, by stats. 7 & 8 *W.* 3. *c.* 34., 8 *G.* 1. *c.* 6., and 22 *G.* 2. *c.* 46. The latter statute (by § 36.) enacts, "if any person making such affirmation or declaration shall be lawfully convicted of having wilfully, falsely, and corruptly affirmed and declared any matter or thing, which, if the same had been deposed in the usual form, would have amounted to wilful and corrupt perjury, every person so offending shall incur and suffer the like pains, penalties, and forfeitures, as by the laws and statutes of this realm are to be inflicted on persons convicted of wilful and corrupt perjury." But (by § 37.) it is provided, "that no Quaker shall by virtue of this act be qualified or permitted to give evidence in criminal cases, or to serve on juries, or to bear any office or place of profit in the government."

Quakers not to give evidence in criminal cases.

Perry. See tit. Excise, Vol. II.

Petition.

[13 C. 2. c. 5.]

Tumultuous petitioning. BY stat. 13 *C.* 2. *c.* 5. No person shall solicit above 20 hands to any petition to the king, or either house of parliament, for alteration of matters established by law in church or state, unless the matter thereof hath been consented to by three or more justices of the county, or by the major part of the grand jury at the assizes or sessions; or, if arising in *London*, by the lord mayor, aldermen, and common council; nor shall present any such petition accompanied with more than ten persons, on pain of a sum not exceeding 100*l.* and three months' imprisonment, on

conviction at the assizes or sessions in six months, and proved by two witnesses. 13 C. 2. c. 5.

But this shall not extend to debar any persons (not above ten in number) to present any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any address to the king by the parliament. See 4 *Blac. Com.* 147.

Petit Larceny. See **Larceny**, *ante*.

Petit Treason. See **Treason**, Vol. V.

Pewter and other Metals.

[19 H. 7. c. 6. — 4 H. 8. c. 7. — 25 H. 8. c. 9. — 33 H. 8. c. 4. — 2 & 3 Ed. 6. c. 37.]

See stat. 29 *G.* 2. *c.* 30. respecting receivers of stolen pewter, &c. Vol. I. p. 19. *et seq.*

DURING the reigns of *Hen.* 7. & 8. and *Edw.* 6. five different statutes (which see above) were passed for the purpose of preventing as well the importation of manufactured goods of tin or pewter, as the exportation of any brass, copper, or other metals, (tin and pewter only excepted,) in an unmanufactured state; as also to prevent any goods being manufactured within this kingdom, of tin, pewter, or brass of inferior quality to what *they ought* to be, on pain of forfeiting half to the king, and half to the *finder*. 2 *Dickinson*, 419.

By stat. 19 *H.* 7. *c.* 6. The master and wardens of the craft of pewterers, and where there are none such, the head and governors of the city or borough may appoint searchers: and the justices at *Michaelmas* sessions shall appoint two persons, having experience therein, to search within the county. And of all such unlawful pewter or brass as they shall find, half shall be to the king and half to the searchers. 19 H. 7. c. 6.

In default of the masters and wardens not searching, any person having sufficient knowledge in the said occupation, by oversight of the mayor or other head officer of cities or boroughs, may search. *Id.*

Pheasants. See tit. **Game**, Vol. II.

Physicians, Surgeons, and Apothecaries.

[5 H. 8. c. 6.—32 H. 8. c. 40.—1 Mar. sess. 2. c. 9.—3 J. 1. c. 5. —6 & 7 W. 3. c. 4.—18 G. 2. c. 15.—55 G. 3. c. 194.]

Recusants not to practise physic.

BY stat. 3 *J.* 1. *c.* 5. § 8. No recusant convict shall practise physic, nor use the trade of an apothecary, on pain of 100*l.*

Apothecary exempted from offices.

By stat. 6 & 7 *W.* 3. *c.* 4. § 2. Apothecaries within *London* and seven miles thereof, and also apothecaries in any other place, who have served seven years' apprenticeship, shall be exempted from the office of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and from being put on any jury or inquest.

Surgeons exempted from offices

By stat. 5 *H.* 8. *c.* 6. Surgeons shall be discharged of the constableship, watch, and all manner of office bearing any armour, and also of all inquest and juries *within London.*

And by stat. 18 *G.* 2. *c.* 15. § 10. All freemen of the surgeons' company in *London* shall be exempted from the office of constable, scavenger, overseer of the poor, and other parish, ward, and leet offices, and from serving on juries and inquests.

Mr. *Hawkins*, speaking of the former of these statutes, says, it seems by the equity thereof, and the ancient custom of the realm, all surgeons have been allowed the like privilege, that is, whether in *London* or elsewhere. 2 *Haw. c.* 10. § 43.

Whether physicians are exempted from offices.

By stat. 32 *H.* 8. *c.* 40. § 1. The president of the commonalty and fellowship of the faculty of physic in *London*, and the commons and fellows of the same, shall be discharged of watch and ward there, and shall not be chosen constable or any other officer.

Yet it seems to have been holden that the equity of this act doth not extend to other physicians not mentioned in it; perhaps for this reason, because physicians have no such special custom for their discharge as surgeons are said to have. 2 *Haw. c.* 10. § 44.

And it seemeth that a practising physician, being chosen constable in pursuance of a custom in respect of his lands in a town, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private; yet if he be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the king's bench. 2 *Haw. c.* 10. § 41.

They cannot sue for fees.

It is clear that a physician cannot maintain an action for his fees; for, like those of a barrister, the fee is a *quiddam honorarium. Chorley* v. *Bolcot*, 4 *T. R.* 317.

With respect to surgeons, however, it is different. They may maintain an action for their care and attendance and for medicines found and provided.

If, however, a surgeon furnishes a bill to his patient and leaves a blank for his charge for his attendances; if the patient pay a certain sum on that account, as the surgeon made no specific

charge, he is bound by the sum so paid, and can recover no more. 3 *Esp.* 192.

Searching for drugs.

By stat. 1 *Mar. sess.* 2. *c.* 9. § 6. All justices, mayors, sheriffs, bailiffs, constables, and other officers in *London*, shall assist the president of the college of physicians, and persons by them authorised, in searching for faulty apothecary wares.

Physician killing a patient.

If a physician give a person a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a disease, and, contrary to the expectation of the physician, it kills him, this is no homicide; and the like of a surgeon. And I hold their opinion (says Ld. *Hale*, 1 *Hale*, 429.) to be erroneous, that think if he be no licensed surgeon or physician that occasioned this mischance, that then it is felony; for physic and salves were before licensed physicians and surgeons; and, therefore, if they be not licensed according to stats. 3 *H.* 8. *c.* 11. or 14 & 15 *H.* 8. *c.* 5., they are subject to the penalties in the statutes; but God forbid that any mischance of this kind should make any person not licensed guilty of murder or manslaughter. These opinions therefore may serve to caution ignorant people not to be too busy in this kind in tampering with physic, but are no safe rule for a judge or jury to go by.

55 G. 3. c. 194. Charter by Jac. I. to the apothecaries' company.

Stat. 55 *G.* 3. *c.* 194. "*for better regulating the practice of Apothecaries throughout* England *and* Wales;" § 1. recites the first charter of king *James* the first to the apothecaries' company, and that some of the clauses and provisions contained in the said charter, so far as the same regard the said society of apothecaries, have been found inadequate for the purposes thereby intended, and enacts, that the said charter of king *James* the first, and all the powers, penalties, regulations, &c. therein contained (except such parts thereof as are hereby altered, varied, or repealed), shall be and the same is hereby declared to be in full force, &c.

Charter confirmed, except as altered by this act.

By § 2. So much of recited charter as directs the master and wardens, &c. to enter the shops of apothecaries and to examine their medicines, &c. and to impose penalties, repealed.

Master, wardens, &c. empowered to enter shops of apothecaries, &c. and examine drugs, &c.

§ 3. And in lieu thereof, the master, wardens, and society of apothecaries, and their successors, or any of the assistants or person properly qualified [*viz.* § 4. for *London* and thirty miles around, being a member of the society of apothecaries of at least ten years' standing; and all other parts of *England* and *Wales*, an apothecary in actual practice for at least ten years,] to be by the master and wardens nominated, not being fewer in number than two persons, may at all seasonable times, in the day time, as often as to the said master and wardens it shall seem expedient, enter into any shop of any apothecary in *England* or *Wales*, and search, survey, prove, and determine, if the medicines, simple or compound, wares, drugs, or things whatsoever therein contained, and belonging to the art or mystery of apothecaries, be wholesome, meet, and fit for the cure, health, and ease of H. M.'s subjects; and all such medicines, &c. which they shall find false, unlawful, deceitful, stale, unwholesome, corrupt, pernicious, or hurtful, shall and may burn, or otherwise destroy; and also shall report to the master, wardens, and assistants of the said society, the name of such person as shall be found to have the same in possession; and the said master, wardens, and assistants, shall and may impose and levy the following fines and penalties upon every

55 G. 3. c. 194. Penalties.

person whose names shall be so reported to them, as hereinafter mentioned, for the first offence 5*l.*, for the second offence 10*l.*, and for the third and every other offence 20*l.*

Penalty on apothecaries refusing to compound, or unfaithfully compounding medicines prescribed.

§ 5. And whereas it is the duty of every person using or exercising the art and mystery of an apothecary, to prepare with exactness, and to dispense such medicines as may be directed for the sick by any physician lawfully licensed to practise physic by the president and commonalty of the faculty of physic in *London*, or by either of the two universities of *Oxford* or *Cambridge*; therefore, for the further protection, security, and benefit of H. M.'s subjects, and for the better regulation of the practice of physic throughout *England* and *Wales*, it is enacted, that if any person using or exercising the art and mystery of an apothecary, shall at any time knowingly, wilfully, and contumaciously refuse to make, mix, compound, prepare, give, apply, or administer, or any way to sell, set on sale, put forth, or put to sale to any person or persons whatever, any medicines, compound medicines, or medicinable compositions, or shall deliberately or negligently, falsely, unfaithfully, fraudulently, or unduly make, mix, compound, prepare, give, apply, or administer, or any way sell, set on sale, put forth, or put to sale to any person or persons whatever, any medicines, compound medicines, or medicinable compositions, as directed by any prescription, order, or receipt, signed with the initials in his own hand-writing, of any physician so lawfully licensed to practise physic, such person or persons so offending shall, upon complaint made within twenty-one days by such physician, and upon conviction of such offence before any of his majesty's justices of the peace, unless such offender can shew some satisfactory reason, excuse, or justification in this behalf, forfeit, for the first offence, the sum of 5*l.*; for the second offence the sum of 10*l.*; and for the third offence, he shall forfeit his certificate, and be rendered incapable in future of using or exercising the art and mystery of an apothecary, and be liable to the penalty inflicted by this act upon all who practise as such without a certificate, in the same manner as if such party so convicted had never been furnished with a certificate enabling him to practise as an apothecary; and such offender so deprived of his certificate shall be rendered and deemed incapable in future of receiving and holding any fresh certificate, unless the said party so applying for a renewal of his certificate shall faithfully promise and undertake, and give good and sufficient security, that he will not in future be guilty of the like offence.

Persons not to practise as apothecaries, &c. without due examination.

§ 14. And to prevent any person from practising as an apothecary without being properly qualified to practise as such, it is enacted, that after the 1st day of *August*, 1815, it shall not be lawful for any person (except persons already in practice as such) (*a*), to practise as an apothecary in any part of *England* or *Wales*, unless he shall have been examined by the court of examiners, or the major part of them, and have received a certi-

(*a*) The house apothecary of an infirmary, who officiates in mixing medicines for the patients of the charity, but for no others, is a person already in practice as an apothecary within § 14. of this act, and needs not obtain a certificate, nor serve an apprenticeship of five years, as required by the § 15. *Wogan* v. *Somerville*, 7 *Taunt.* 4. 1. 1 *Moore*, *C. P.* 102.

ficate of his being duly qualified to practise as such from the said court of examiners or the major part of them (a), who are hereby authorised and required to examine all persons applying to them, for the purpose of ascertaining the skill and abilities of such persons in the science and practice of medicine, and their fitness and qualification to practise as an apothecary; and the said court of examiners, or the major part of them, are hereby empowered either to reject such person, or to grant a certificate of such examination, and of his qualification to practise as an apothecary as aforesaid: provided always, that no person shall be admitted to such examination until he shall have attained the full age of 21 years. 55 G 3. c.194.

Applicants for examination to produce testimonials.

§ 15. Provides and enacts, that no person shall be admitted to any such examination for a certificate to practise as an apothecary, unless he shall have served an apprenticeship of not less than five years to an apothecary, and unless he shall produce testimonials to the satisfaction of the court of examiners, of a sufficient medical education, and of a good moral conduct.

Penalty for acting without a certificate.

§ 20. Enacts, that if any person (except such as are then actually practising as such) shall, after the 1st *August* 1815, act or practise as an apothecary in any part of *England* or *Wales*, without having obtained such certificate as aforesaid, every person so offending shall, for every such offence, forfeit the sum of 20*l*.; and if any person (except such as are then acting as such, and excepting persons who have actually served an apprenticeship as aforesaid) shall, after the said 1st of *August* 1815, act as an assistant to an apothecary to compound and dispense medicines, without having obtained such certificate as aforesaid, every person so offending shall for every such offence forfeit the sum of 5*l*.

Incapacity to make up physicians' prescriptions prior to a certain day, is cogent evidence that the party had never practised *as an apothecary* before that day.

Where a defendant was sued for a penalty under this section of the statute, and contended that he was within the exception, as having prior to 1st *August* 1815, actually practised as an apothecary: the court of K. B. held that it was proper, in summing up to the jury, for the judge to refer to the 5th section of the act, as describing the duty of an apothecary to be to make up the prescriptions of physicians; and it appearing that the defendant never had, or could have done so, prior to *August* 1st 1815, that such total incapacity was cogent evidence to be left to the jury, and that they did right to find that he had never practised *as an apothecary*, although, in fact, he had on many occasions administered medicines to various patients prior to that period. *The Apothecaries' Company* v. *Warburton*, *M.* 1819, 3 *B.* & *A.* 40.

Practising as an apothecary on, and previously to 12th *July* 1815, will not exempt from 55 *G.* 3., unless it be proved that he was so practising on 1st *Aug.* 1815 (the day when the act was to take effect).

In an action for the penalty on stat. 55 *G.* 3. *c.* 194., for practising as an apothecary, without having obtained the certificate by that act, which received the royal assent on the 12th *July* 1815, and which generally was to take its effect from the 1st *August* following; it is not sufficient for the defendant, in order to bring himself within the exception contained in § 20 to shew, that previously to and on the 12th *July* 1815, he was practising as an apothecary, but it is necessary to shew that he was so practising on the

(a) In an action to recover the amount of an apothecary's bill, the plaintiff, who, under this statute proves a certificate from the court of examiners, need not also prove an apprenticeship served. *Sherwin* v. *Smith*, 1 *Bing.* 204.

55 G.3. c.194. 1st of *August* 1815. *Apothecaries' Company* v. *Roby*, *T.* 3 *G.* 4. 5 *B.* & *A.* 949.

Apothecaries not to recover charges, unless duly licensed.

§ 21. And no apothecary shall be allowed to recover any charges claimed by him in any court of law, unless he shall prove on the trial, that he was in practice as an apothecary prior to or on the 1st of *August* 1815, or that he has obtained a certificate to practise as an apothecary, from the said master, wardens, and society of apothecaries as aforesaid.

Application of monies arising from certificates.

§ 24. Enacts, that all sums of money which shall arise from the granting of certificates of examination, shall be appropriated and disposed of by the said master, wardens, and society of apothecaries in such manner as they shall from time to time direct and deem most expedient.

Application of monies arising from penalties.

§ 25. And all sums arising from conviction and recovery of penalties for offences committed against this act, shall be applied and disposed of in manner following, (*viz.*) one-half to the informer, and one-half thereof to the said master, wardens, and society of apothecaries, to be disposed of in such manner as they shall deem most expedient.

Recovery of fines and penalties.

§ 26. Enacts, that all penalties and forfeitures by this act imposed (the manner of levying and recovering whereof is not otherwise directed) shall, if they exceed the sum of 5*l.*, be recovered by action, in the name of the master, wardens, and society of apothecaries of the city of *London*, in any of his majesty's courts of record in *England* or *Wales*, &c.; and if such penalty or forfeiture shall amount to less than the sum of 5*l.*, the same shall be levied and recovered by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of any justice of the peace acting for any county, city, town, or place where the offence shall be committed (which warrant such justice is hereby empowered and required to grant upon the confession of the party, or upon the evidence of any credible witness upon oath, and which oath such justice is hereby empowered to administer); and the overplus (if any) of the money arising by such distress and sale shall be returned upon demand to the owner of such goods and chattels, after deducting the costs and charges of making, keeping, and selling the distress; and in case sufficient distress shall not be found, or such forfeitures and penalties shall not be paid forthwith, it shall be lawful for such justice, and he is hereby authorised and required, by warrant under his hand and seal, to cause the offender to be committed to the common gaol for the county, city, town, or place, where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding one calendar month, unless such penalties and forfeitures, and costs, shall be sooner fully paid and satisfied.

Distress not unlawful for want of form.

§ 27. And where any distress shall be made for any sum of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser on account of any defect or want of form in the notice or information, summons, conviction, warrant or distress, or other proceeding relating thereto; nor shall the party distraining be deemed a trespasser *ab initio*, on account of any irregularity which shall be afterwards done by the party so distraining; but the person aggrieved by such irregularity, may

recover full satisfaction for the special damage in an action upon the case. 55 G. 3. c. 194.

§ 28. Provides, that nothing in this act contained shall extend in any way to affect the trade or business of a chemist and druggist, in the buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinable compounds, wholesale and retail; but all persons using or exercising the said trade or business, or who shall or may hereafter use or exercise the same, may use, exercise, and carry on the same trade or business in such manner, and as fully and amply to all intents and purposes, as the same trade or business was used, exercised, or carried on by chemists and druggists before the passing of this act. Act not to affect chemists and druggists.

§ 29. Provides, that nothing in this act contained shall extend to prejudice, or in any wise to interfere with any of the rights, privileges, &c. of the two universities of *Oxford* or *Cambridge*, the royal college of physicians, the royal college of surgeons, or the said society of apothecaries, except such as shall or may have been altered or amended by this act, or of any person practising as an apothecary previously to the 1st day of *August* 1815. Saving rights.

§ 30. Provides, that no action or suit shall be brought or prosecuted against any person, bodies politic, corporate, or collegiate, for any thing done in pursuance of this act, after six calendar months next after the fact committed; or in case there shall be a continuation of damages, then after six calendar months next after such damage shall have ceased; and every such action shall be laid and brought in the county where the matter in dispute shall arise; and the defendant recovering shall have double costs. Limitation of actions.

Pickpockets. See **Larceny**, *ante*, p. 217.

Pigeons. See **Game.**

Pillory and Tumbrel.

[56 G. 3. c. 138.]

PILLORY (in Latin, *collistrigium*, from the person's neck being put between two boards) is a very ancient punishment in this kingdom, and was used heretofore by the Saxons. 3 *Inst.* 219. Pillory, what.

The *tumbrel* seemeth to have been anciently the same with the *ducking stool*; an engine for the punishment of scolding women, by ducking them over head and ears in water, and especially in muddy or stinking water, according to the etymology of Ld. *Coke*, who tells us that the word tumbrel signifieth a dung cart. *Lamb.* 61. 3 *Inst.* 219. Tumbrel, what.

Every one that hath a leet or market ought to have a pillory and tumbrel to punish offenders; and it seems that a leet may be forfeited for not taking care to have a pillory and tumbrel. 3 *Inst.* 219. 2 *Haw.* c. 11. § 5. Who shall find them.

Infamy of the punishment.

They that have been adjudged to the pillory or tumbrel are so infamous that they shall not be received to be jurors or witnesses. 3 *Inst.* 219.

56 G. 3. c. 138. Judgment of pillory to be awarded for certain offences only.

By stat. 56 *G.* 3. *c.* 138. after reciting that whereas the punishment of the pillory has in many cases been found inexpedient, and not fully to answer the purpose for which it was intended; it is enacted, "that from and after the passing of this act judgment shall not be given and awarded against any person or persons convicted of any offence, that such person or persons do stand in or upon the pillory, except for the offences hereinafter mentioned; any law, statute, or usage to the contrary notwithstanding: provided that all laws now in force whereby any person is subject to punishment for the taking any false oath, or for committing any manner of wilful and corrupt perjury, or for the procuring or suborning any other person so to do, or for wilfully, falsely, and corruptly affirming or declaring, or procuring or suborning any other person so to affirm and declare, in any matter or thing which, if the same had been deposed in the usual form, would have amounted to wilful and corrupt perjury, shall continue and be in full force and effect; and that all persons guilty of any of the said several offences shall incur and suffer the same punishment, penalties, and forfeitures as such persons were subject to by the laws and statutes of this realm, or any of them, before the passing of this act, and as if this act had not been made."

Court may fine or imprison offenders.

§ 2. Enacts, "that in all cases where the punishment of the pillory has hitherto formed the whole or a part of the judgment to be pronounced, it shall and may be lawful for the court before whom such offence is tried, to pass such sentence of fine or imprisonment, or of both, in lieu of the sentence of pillory, as to the said court shall seem most proper: provided that nothing herein contained shall extend or be construed to extend in any manner to change, alter, or affect, any punishment whatsoever which may now be by law inflicted in respect of any offence, except only the punishment of pillory, in manner as herein above is enacted."

Not to change any punishment for offences, except the pillory.

Plague, and Quarantine.

[45 G. 3. c. 10. — 46 G. 3. c. 98. — 50 G. 3. c. 20. — 51 G. 3. c. 46.]

THE performance of *quarantine*, or forty days' probation when ships arrive from countries infected with contagious disorders, is of the highest importance, as it affects the public health of the nation, and has been enforced from time to time by various legislative enactments. 4 *Bla. Com.* 161. 1 *Russ.* 149. Stat. 45 *G.* 3. *c.* 10. is the principal statute upon the subject now in existence, the ninth section of which repeals all other acts relating to quarantine, excepting as to arrears of duty, and as to offences then committed against them. 4 *Bla. Com.* 161. 1 *Russ.* 149. By § 1 & 2 of stat.

45 G. 3. c. 10.

45 *G.* 3. *c.* 10. certain regulations are enacted with respect to the

building of a lazaret on *Chetneyhill* in *Kent*, and providing floating lazarets till the other lazaret be completed; by § 3. certain duties are made payable by the owners of ships, vessels, and cargoes performing quarantine; [but by stat. 46 *G.* 3. *c.* 98. § 4. ships liable to quarantine solely by involuntary communication are exempt from these duties;] by § 2. a power is given to the lords commissioners of the treasury to reduce or increase these duties under certain circumstances; § 6, 7, & 8. relate to the payment and application of the duties. 45 G. 3. c. 10. 46 G. 3. c. 98.

By stat. 45 *G.* 3. *c.* 10. § 10. All vessels coming from or having touched at any place whence H. M. may have declared it probable that the plague or any other infectious dangerous disease may come; and all vessels and boats receiving any persons or merchandises or other articles from such vessels, whether such persons, &c. shall have come in such vessels, or shall have gone or been put on board such vessels, either before or after their arrival at any place in *G. B.*, or the islands of *Guernsey*, *Jersey*, *Sark*, or *Man*, and all such persons, &c. shall be liable to quarantine, and any orders in council made concerning it, and all such vessels, boats, persons, &c. shall upon their arrival perform quarantine as directed by any order in council notified by proclamation or published in the *London Gazette*, and until they have duly performed and been discharged from such quarantine, they shall not any of them come or be brought on shore, or be put on board any other vessel for shore, in any manner, except by licence as directed in such order: And all such vessels, &c. being liable to quarantine, shall be subject to this act or any order in council concerning quarantine. 45 G. 3. c. 10. Of vessels coming from infected places, and persons communicating with them.

By § 11. All such goods and merchandise as shall be particularly specified in any order in council concerning quarantine which shall be brought into any place in *G. B.* or the islands aforesaid, from any foreign place, and the vessels in which they shall be brought, and all vessels arriving from any place under any suspicious circumstances as to infection, shall be subject to any order in council respecting the same. Goods and vessels subject to the order in council.

By § 12. Power is given to the privy council, or any three of them, to make such order as to them shall seem proper in cases of emergency, or in any particular case with respect to ships arriving under any suspicious circumstances, though they have not come from any infected place; and also in case of any infectious disease appearing in *G. B.* or the said islands, to give such directions to cut off all communication between infected persons and others, as shall appear expedient; and also to shorten or mitigate quarantine in particular cases.

By § 13. Regulations are enacted in cases where the distemper appears in any vessel within the streights of *Gibraltar;* and it enacts, that in cases where the vessel is without the streights, it shall (unless the land lazaret be declared fit for quarantine) immediately proceed to the harbour of *St. Helen's*, (*Scilly* islands) or to any other by his majesty in council, by order notified by proclamation or published in the *London Gazette*, directed; on its arrival the person having the charge thereof shall make his case known to some officer of the customs there, who shall immediately acquaint the governor, deputy governor, or other principal magistrate, and also the principal officer of the customs at some How notice of the ship's arrival is to be given.

45 G.3. c.10. port in *England* near thereto, which said officer shall send intelligence thereof to the commissioners of the customs in the port of *London*, and the governor, &c. shall also send intelligence to the privy council, and the vessel shall remain there till directions be given by the council or any three of them; if the vessel cannot make the said islands of *Scilly*, &c., or shall be forced by stress of weather to go up channel, it shall not enter any port or place in *G. B.*, &c., but shall remain in some open road, till the person in the charge thereof receives directions from the privy council or any three of them as aforesaid, and there shall be no intercourse till such directions are received between such vessel and others, and the master, commander, or any other person on board, who shall disobey such directions, received on board such vessel, or the regulations of this act, shall be guilty of felony without benefit of clergy.

Of the quarantine signals. By § 14. The person having the charge of any vessel liable to quarantine, who shall meet with any other vessel at sea, or within four leagues of *G. B.* or *Ireland*, or the islands of *Guernsey*, &c., shall hoist a signal to denote that his vessel is so liable; if the ship have a clean bill of health, the signal shall be a yellow flag at the main-top mast head; if not a clean bill, then a yellow flag with a circular black ball in the middle thereof: In the night in both cases the signal shall be a large signal lanthorn, these signals respectively to be continued whilst within sight of such other vessel, or within four leagues of the said coasts or islands, until legally discharged from quarantine, whilst so in sight or within such distance; and in default thereof, the person having the charge thereof, to forfeit for each offence 200*l.*

46 G.3. c.98. By stat. 46 *G.3. c.* 98. § 1. If the ship or vessel have on board the plague or other infectious disease or distemper, the day signal shall be a flag of yellow and black, and the night signal two large signal lanthorns, one over the other, at the same mast-head.

45 G. 3. c. 10. Penalty on persons hoisting such signals when not liable. By stat. 45 *G.* 3. *c.* 10. § 15. If any person, having the charge of any vessel, and knowing it to be not liable to quarantine, shall hoist either of such signals by day or night, he shall forfeit 200*l.*

Of the pilot. By § 16. Every person having the charge of any vessel coming from foreign parts, shall give to the pilot going on board such vessel a written account of the names of the place and country at which such vessel shall have loaded, and at which it shall have touched on the homeward voyage, on pain of forfeiting 200*l.* for any neglect or refusal to give such paper, or for any false representation or wilful omission therein: and if by any proclamation or order in council made after the departure of such vessel from *G. B.* and then in force, vessels coming from any place mentioned in such paper be liable to quarantine, such pilot shall immediately give notice thereof to the person so having charge, on pain of forfeiting 50*l.*, and the proper signal shall be thereupon immediately hoisted.

46 G.3. c.98. By stat. 46 *G.* 3. *c.* 98. § 2. The master or commander of the vessel shall, in addition, deliver to the pilot who shall go on board, an account of the cargo, on penalty of 200*l.*; and the pilot shall give notice to the master or commander, if any articles be on board liable to quarantine, on penalty of 100*l.*

45 G. 3. c. 10. By stat. 45 *G.* 3. *c.* 10. § 17. If any pilot shall conduct any vessel liable to quarantine into any place not appointed for the reception

of such vessels, after receiving such paper whereby it shall appear the vessel was so liable, or without requiring and receiving such paper, unless compelled by stress of weather, or accidents of the sea, he shall forfeit 100*l.* 45 G. 3. c. 10.

And by § 18. That it may be better known whether any vessel be actually infected with the plague or other infectious distemper, or whether the mariners or passengers, or cargo, are liable to quarantine, it is enacted that when any country shall be known or suspected to be infected, or when any order in council shall be made concerning quarantine, then as often as any vessel shall attempt to enter in any place in *G. B.* or the isles, &c., the superintendant of quarantine or his assistant, or, if there be no such, the principal officer of the customs, or such officer of the customs as shall be thereto authorised at that place by the commissioners of the customs or any four of them, shall go off to such vessel, and shall at a convenient distance therefrom demand of the person having charge of such vessel, who shall upon such demand give a true answer in writing or otherwise, and upon oath or not upon oath, according as he shall be required, to all such questions as shall be put to him in pursuance of such directions as by his majesty in council shall be prescribed, and upon refusal so to do, or upon giving a false answer, he shall forfeit for each offence 200*l.* How inquiry shall be made of the vessel as to its state, &c.

By stat. 46 *G.* 3. *c.* 98. § 3. If any pilot being on board, or any commander, &c. of a ship, &c. coming from foreign parts, whether liable to quarantine or not, shall refuse, when required by a quarantine officer, to bring to, for the purpose of interrogation, such pilot or commander, &c. shall forfeit 100*l.* 46 G. 3. c. 98.

By stat. 45 *G.* 3. *c.* 10. § 19. If it shall appear that any such vessel is liable to quarantine, and that the port where it so arrives is not the port where it ought to perform quarantine, the officers of any ships of war, or forts, or garrisons, or other officers whom it may concern, shall upon notice compel such vessel to go to the appointed place; and the master of every such vessel, coming from any place visited with the plague, or having any infected person on board and knowing the same, shall conceal the same, or shall wilfully omit hoisting the quarantine signal, shall be guilty of felony without benefit of clergy. 45 G. 3. c. 10. Vessels liable to perform quarantine compellable to go to places appointed. Coming from places visited with the plague, and concealing the same, or persons infected.

By § 20. Every person having charge of any vessel which shall be ordered to perform quarantine, shall immediately after his arrival at the place of quarantine deliver on demand to the superintendant of quarantine or his assistant, or other officer authorised as aforesaid, who is also hereby required to make such demand, his bill of health and manifest, together with his log-book and journal, under pain of forfeiting 100*l.* if he shall wilfully refuse and neglect so to do.

By § 21. If the master of any vessel liable to perform quarantine shall himself quit or knowingly permit any seaman or passenger to quit such vessel before such quarantine shall be performed, unless by a proper licence, or shall not within a convenient time after notice cause such vessel and lading to be conveyed into the place appointed for quarantine, he shall forfeit 500*l.*; and if any person or any pilot going on board the same shall so quit such ship contrary to the true meaning of this act, any person whatsoever, by any necessary force, may compel such person to return on Masters quitting such vessels, or permitting others to quit, to forfeit 500l. Persons quitting such vessels compellable to return, and to forfeit 200l.

45 G.3. c.10. board, who shall for every offence be imprisoned for six months, and shall also forfeit 200*l.*

Vessels having performed quarantine in foreign parts, not to land goods liable to retain infection, without directions from the privy council.

By § 22. Where any vessel, which has performed quarantine in any foreign lazaret, shall arrive with a clean bill of health, no goods shall be landed, or moved in order to be landed, but the commander shall upon his arrival give notice thereof, and of the contents of his schedule or manifest, and of the foreign port where he performed quarantine, to the principal officer of the customs where he shall arrive, or the port nearest thereto, in order that the same may be laid before the privy council; and if any such commander shall unload or move in order to land any such goods before an order of the privy council shall be made for that purpose, he shall for every such offence forfeit 200*l.*

Persons liable to perform quarantine to obey the orders of the officers appointed to see quarantine performed.

By § 23. All persons liable to perform quarantine and all persons having had communication with them shall be subject to the orders of the officers authorised as above to direct the performance thereof, who may enforce obedience thereto, and in case of necessity call in others to assist, who are required to assist accordingly; and may compel all persons liable to perform quarantine, and such other persons as aforesaid, to repair, and to convey all goods comprised in any order made as aforesaid, to the lazaret or place appointed in that behalf; and if any person shall refuse or neglect to duly repair, when required so to do, to the place so appointed, or shall escape, or attempt to escape therefrom, before quarantine be duly performed, he shall be guilty of felony without benefit of clergy, and the quarantine officers shall use necessary force to compel such persons to repair or return to the same.

Persons quitting ships liable to perform quarantine, &c. may be seized.

By § 24. It shall be lawful for any peace officer or other person to seize any person that shall, contrary to the provisions of this act, have quitted or come on shore from any vessel liable to quarantine, or who shall have escaped therefrom while under quarantine, or from any place or lazaret appointed in that behalf, to carry such person before any justice or magistrate; and it shall be lawful for such justice or magistrate to grant his warrant for the apprehending or conveying any such person as aforesaid back to the vessel, or lazaret, or place, or for the confining any such person in such place of safe custody, (not being any public gaol,) and under such restrictions as to communication with other persons, as may in the discretion of any justice or magistrate (calling to his aid, if he shall see fit, any medical person,) appear to be proper, until he can be safely conveyed to any place appointed for quarantine, or till directions can be received in that behalf from the privy council.

Officers of the customs, or others employed, neglecting their duty.

By § 26. If any officer of the customs, or other person employed concerning quarantine, shall knowingly and wilfully embezzle any articles performing quarantine, or shall be guilty of any wilful breach or neglect of duty, he shall forfeit his office, and be thenceforth incapable of the same, and shall forfeit 100*l.*; and if he shall desert from his duty, or knowingly permit any person, vessel, or goods to depart or be conveyed out of the lazaret, ship, or place appointed, unless by an order of council, or if any person appointed to give a certificate of the ship having duly performed quarantine or airing, shall knowingly give a false certificate, he shall be guilty of felony without benefit of clergy; and if any such officer shall wilfully damage any goods performing

quarantine under his direction, he shall be liable to treble damages and full costs of suit. 45 G. 3. c. 10.

Sound persons entering lazarets.

By § 27. If any sound person shall enter any lazaret, while any person under quarantine shall be there, he shall perform quarantine; and if he shall return or attempt to return from thence (unless duly licensed), or shall escape or attempt to escape, he shall be guilty of felony without benefit of clergy.

After quarantine performed, and certificate thereof, vessels, &c. not liable to further restraint.

And by § 28. After quarantine hath been performed, on proof on the oath of the master or other person having charge of such vessel, and of two persons belonging thereto, or upon the oaths of two witnesses, before the collector or principal officer of the customs of the port, or one neighbouring justice, that such vessel, and every such person respectively, have duly performed quarantine, and are free from infection; and after producing a certificate to that purpose signed by the chief officer superintending such quarantine, or person acting for him, such collector, or officer of the customs, or such justice, shall give a certificate thereof, whereupon such vessel and every person so having performed quarantine shall be liable to no further restraint.

By § 29. All goods liable to quarantine as aforesaid shall be aired in such place and manner as H. M. by order of council shall direct.

46 G. 3. c. 98. Proof and certificate of goods having been opened and aired, (instead of the proof and certificate required by stat 45 G. 3. c. 10. § 29.)

By stat. 46 *G.* 3. *c.* 98. § 5. So much of stat. 45 *G.* 3. *c.* 10. § 29., as relates to the certificate and proof of opening and airing goods, is repealed, and it is enacted, that proof thereof shall be made by the oaths of the master of the lazaret or vessel in which the goods, &c. shall have been opened and aired, and of one of the guardians or of the officers authorised by the commissioners of the customs, or, if there be no such officer, then by the oaths of two or more credible witnesses serving in the said lazaret or vessel, and such officer, &c. shall make out certificates of such proof having been made, and on production of such certificate to the proper officer of customs, such goods shall be liable to no further restraint.

45 G. 3. c. 10. Forging certificates.

By stat. 45 *G.* 3. *c.* 10. § 30. If any person shall knowingly and wilfully forge or counterfeit any such certificate, or cause the same to be done, or shall publish as true such forged and counterfeit certificate, knowing it to be such, he shall be guilty of felony without benefit of clergy.

By § 31. If any person shall land or unship, or move in order to be landed, unshipped, or moved, any goods or articles whatever from any vessel liable to quarantine, or shall knowingly receive the same after they have been so landed or unshipped, he shall forfeit not exceeding 500*l.* nor less than 100*l.*; and if any person shall clandestinely convey, or shall secrete or conceal for the purpose of conveying any goods or articles as aforesaid from any vessel actually performing quarantine, or from the lazaret or place where they are performing quarantine, he shall be guilty of felony without benefit of clergy.

During the plague in Great Britain, France, &c. vessels under twenty tons not to sail until bond is given.

And by § 32. If it shall at any time happen that any part of *G. B.* or *Ireland*, or the isles aforesaid, or *France*, *Spain*, *Portugal*, or the *Low Countries*, shall be infected as aforesaid, H. M. may by proclamation restrain small vessels under twenty tons from passing out of *G. B.* or the said isles, until bond be given by the master thereof with sufficient sureties in the penalty of 300*l.* that such vessel shall not touch at any place in the pro-

15 G. 3. c. 10. clamation mentioned, and that no person on board shall go on board any other vessel at sea, or permit any person to come on board from or receive any goods out of any other vessel at sea. And in case any vessel, for which such security shall be required, shall pass out of any such port or place before such security be given, every such vessel so sailing contrary to the true intent and meaning of this act, together with her tackle and furniture, shall be forfeited, and the master and every mariner sailing therein shall severally forfeit 20*l.*

Penalties how to be recovered. By § 34. All penalties by this act imposed may be recovered in the courts at *Westminster*, or by information before two justices, and may be levied upon the offender's goods, and if he shall not have goods sufficient, he shall be committed to gaol till payment thereof; which penalties shall belong half to the person who shall inform and sue, and half to H. M., to be applied in repairing lazarets.

By § 35. All actions and prosecutions under this act are to be in the name of the attorney-general, or some officer of the customs, and by § 36. the attorney-general may stop proceedings therein altogether.

(See also stat. 46 G. 3. c. 98. § 10.) § 37. Gives power, in cases where by this act examinations and answers are to be upon oath, to those who are authorised to take such examinations, &c. to administer such oaths; and those who wilfully swear falsely or procure others to do so, shall be deemed guily of perjury and subornation of perjury.

Offences (not felony) may be tried before two justices. And by § 38. All offences committed against this act (not being felony), and every offence or disobedience to any order of council for which no specific penalty or punishment is provided by this act, shall be heard and determined before two justices; and if any person shall be convicted of any such offence or disobedience, he shall be liable to such forfeiture and penalty not exceeding 50*l.* for any one offence, or to imprisonment not exceeding three months for any one offence, as in the discretion of such justices shall be judged proper; which pecuniary penalty shall be applied half to the person who shall sue, and half to the king, to be applied as aforesaid.

By § 40. In any proceeding against any person for any offence against this act, or any act hereafter passed relating to quarantine, or for any disobedience of any order in council relating thereto, and notified and published as aforesaid, or of any order made by three or more of the lords of the council as aforesaid, the answer of the commander, master, or other person having charge of any vessel to any questions put to him by virtue of this act, or any future act relating to quarantine, shall be evidence as to whence such vessel came and where she touched: and the being directed as aforesaid to perform quarantine shall be proof the vessel was liable to quarantine, unless the defendant show by satisfactory proof to the contrary; and the vessel being actually under quarantine, it shall be taken to be liable thereto, without proving in what manner it so became liable.

By § 41. A power is given in certain cases to any judge of K. B. to cause a party indicted under this act to be apprehended, and committed to gaol.

By § 42. All offences against this act may be tried in any county.

With respect to the appointment of superintendants of quaran-

tine, it is enacted by stat. 50 *G.* 3. *c.* 20., that they and their assistants may be appointed by any instruments signed by four commissioners of the customs, and sealed with the seal of their office. 50 G.3. c.20.

By stat. 51 *G.* 3. *c.* 46. Every thing required in stat. 45 *G.* 3. *c.* 10. to be done by the superintendant of quarantine, or his assistant, may, in case of the absence or sickness of such superintendant or assistant, be done by the principal officer of the customs at the port or place, or by such officer of the customs as shall be authorised by the commissioners of the customs, or any four or more of them, to act in that behalf. 51 G.3. c.46.

By stat. 46 *G.* 3. *c.* 98. § 6. The privy council may order ships coming from *America* or the *West Indies*, when the yellow fever, &c. prevails there, to go to certain places without being liable to quarantine. 46 G.3. c.98.

§ 7. Intercourse within limits of stations allotted for quarantine of ships without clean bills of health, may be prohibited by order in council; under penalty of 500*l.*

§ 8. Penalty on forging or uttering false certificates, required by order in council, felony without clergy.

§ 9. Consuls and vice-consuls may administer oaths.

§ 10. Persons authorised to take examinations may administer oaths; false oaths incur the penalty of wilful and corrupt perjury.

Plate.

[28 Ed. 1. c. 20. — 12 & 13 W. c. 4. — 1 Ann. st. 1. c. 9. — 6 G. 1. c. 11. — 12 G. 2. c. 26. — 13 G. 3. c. 52. — 24 G. 3. c. 53. — 52 G. 3. c. 143. — 55 G. 3. c. 185.

TO prevent frauds in the true making of plate, it is enacted by stats. 12 & 13 *W. c.* 4., the 1 *Ann. st.* 1. *c.* 9., and 13 *G.* 3. *c.* 52., that (besides the city of *London*) *York*, *Exeter*, *Bristol*, *Chester*, *Norwich*, *Newcastle-upon-Tyne*, *Sheffield*, and *Birmingham*, shall be appointed for the assaying and marking of plate. 12 & 13 W.3. c.4. 1 Ann. st. 1. c.9. 13 G.3. c.52. Assayers.

And the goldsmiths, silversmiths, and plateworkers in the said places, shall be incorporated into a ompany and choose wardens yearly.

An assayer shall be elected by the company in each of the said places, who shall take an oath of office.

By the said acts, every goldsmith, silversmith, and plateworker, within the said places, and elsewhere, shall, before he takes upon him to exercise the said trade, enter his name, and mark, and place of abode, with the wardens of the company where an assayer is; and if he shall not make such entry, or shall strike any other mark but what is so entered, he shall forfeit double value, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed. Maker to be entered with the wardens of the company.

Every goldsmith, silversmith, and plateworker, inhabiting where there is not an assayer, shall first fix his mark, and then Assaying.

send it to an assayer; and if it be found by the assayer to be of the fineness of the standard, then he shall mark it: and if any such person shall make any plate (less in fineness than the standard) or put any to sale (except what by reason of its smallness is not capable of the touch) before it shall be assayed and marked, he shall forfeit the same, or the value thereof.

24 G. 3. c. 53. And by stat. 24 *G.* 3. *c.* 53. § 4. Every working gold or silversmith shall send to the assay office all plate made by him, to be touched or assayed, and with every parcel shall send a written note, containing the day of the month, and year, the name of the maker, and place of his abode, and also the species in such parcel, and number of each species, with the total weight of each parcel, and the duty payable for the same.

6 G. 1. c. 11. Fineness by the standard. As to the fineness thereof by the standard, it is enacted by stat. 6 *G.* 1. *c.* 11. § 41. that plate may be made, either according to the old standard (of 11 ounces and 2 pennyweights fine silver, in every pound troy,) or according to the new standard (of 11 ounces and 10 pennyweights); but differently marked.

Mark. That is to say, plate of 11 ounces and 2 pennyweights, shall be marked with the maker's mark, *viz.* the first letters of his christian and surname, the mark of the goldsmiths' company in *London*, *viz.* the leopard's head, lion passant, and a distinct variable mark to denote the year (or, with the mark of the worker or maker, and with the mark appointed to be used by the assayers at the several respective places).

12 G. 2. c. 26. And by stat. 12 *G.* 2. *c.* 26. § 5. Plate of 11 ounces and 10 pennyweights shall be marked with the maker's mark, *viz.* the first letters of his christian and surname; and the mark of the said company, *viz.* a lion's head erased, the figure of a woman, called *Britannia*, and the said mark or letter to denote the year (or, with the mark of the worker or maker, and the mark of one of the said cities or towns respectively).

6 G. 1. c. 11. § 41. And it shall not be lawful to make any vessels of silver plate or manufactures of silver of a coarser alloy than what is herein specified, under the penalties and forfeitures prescribed by any of the laws now in being concerning wrought plate.

52 G. 3. c. 143. Forging stamps on wrought plate of gold, or silver, &c. By stat. 52 *G.* 3. *c.* 143. § 8. If any person shall transpose or remove, or cause, &c. from one piece of wrought gold or silver to another, or to any vessel or ware of base metal, any impression provided, made, or used under the direction of the committee of stamps, or persons authorised in that behalf, for denoting the duties or payment of duties on plate; or shall stamp or mark, or cause, &c. any such with any mark, stamp, or die, forged or counterfeited, to resemble any mark, &c. so provided; or shall sell, exchange, or expose to sale, or export out of *G. B.* any wrought plate of gold or silver, or any vessel or ware of base metal, having thereon the impression of any forged or counterfeited mark, stamp, or die so provided, &c. as aforesaid, or any impression of any such mark, &c. so transposed or removed as aforesaid, knowing the same to be so forged or transposed; or shall wilfully and without lawful excuse (proof to be on the accused) have or be possessed of any such forged or counterfeited mark, &c. every such offender shall on conviction be adjudged guilty of felony without clergy.

R. v. *Jackson*, 1 *Cowp.* 297, 298. The defendant had been

convicted upon stat. 28 *Edw.* 1. *c.* 20. (the punishment of which is imprisonment and ransom at the king's pleasure) for making silver plate of worse alloy than the standard alloy of the realm. The indictment also contained a count upon stat. 6 *G.* 1. *c.* 11., and the third for an offence at common law. He was found guilty upon all the counts. In *Mich.* 1774, motion was made in arrest of judgment, upon the ground of stat. 28 *Ed.* 1. *c.* 20. being repealed, when the court of *K. B.* took time to consider and look into the acts of parliament: Lord *Mansfield* declared the unanimous opinion of the court, that it "*is in full force,* and not repealed or abrogated by any of the subsequent statutes since enacted." His lordship observed, that the preamble of stat. 12 *G.* 2. *c.* 26. recites stat. 28 *Edw.* 1. *c.* 20., and some other acts as *subsisting laws;* but says not one word as to a repeal of any of the former laws. He farther instanced two similar cases decided by him, where sentence of fine and imprisonment was pronounced, and no objection was made in either case. Therefore, said he, I suppose it was taken for granted, as it is at this time by the goldsmiths' company, that the statute was still in force. We are all of opinion that it is in force, and, consequently, that the indictment is good. The rule for arresting judgment was discharged. R. v. Jackson.

And moreover, by stat. 24 *G.* 3. *c.* 53. § 1. 5. All plate shall be marked with a new mark of the *king's head,* beside the old marks, and the duties shall be paid previous to the marking thereof. 24 G. 3. c. 53. Additional mark.

And by § 8. no gold or silver plate shall be sold or exchanged until marked, on pain of 50*l.* Allowance to be made.

But by § 7, 10. the duties shall be returned for all plate defaced for being coarser than the standard (if no fraud appear). And an allowance of one fifth part shall be made for goods sent to be assayed in a rough state.

And by § 9. the said duties shall not extend to any jeweller's work other than mourning rings, nor to any jointed night ear-rings of gold, or gold springs of lockets, or to goods excepted by stat. 12 *G.* 2. *c.* 26. § 6. Goods excepted.

By stat. 55 *G.* 3. *c.* 185. all former duties upon plate (except arrears) are repealed, and the following substituted in lieu thereof: — 55 G. 3. c. 185. Duties.

Plate of gold made or wrought in *G. B.*, and which shall or ought to be touched, assayed, and marked in *G. B.*, for every ounce thereof, and so in proportion for any greater or less quantity, 17*s.* *per* ounce.

Exemption. — Gold watch-cases.

Plate of silver made or wrought in *G. B.*, and which shall or ought to be touched, assayed, or marked in *G. B.*, for every ounce thereof, and so in proportion for any greater or less quantity, 1*s.* 6*d.* *per* ounce.

Exemptions. — All watch-cases, chains, necklace-beads, lockets, filligree work, shirt buckles or broaches, stamped medals, and spouts to china, stone, or earthenware tea-pots, of silver, of any weight whatsoever: Exemptions continued.

Tippings, swages, or mounts, not weighing ten pennyweights of silver each, and not being necks or collars for castors, cruets, or glasses appertaining to any sorts of stands or frames, wares of silver not weighing five pennyweights of silver each; but this exemption not to include necks, collars, and tops, for castors,

55 G. 3. c. 185. cruets, or glasses, appertaining to any sort of stands or frames; buttons to be affixed to or set on any wearing apparel, solid silver buttons, and solid studs, not having a bezelled edge soldered on, wrought seals, blank seals, bottle tickets, shoe clasps, patch boxes, salt spoons, salt ladles, tea spoons, tea strainers, caddy ladles, buckles, and pieces of garnish, cabinets, or knife cases, or tea chests, or bridles, or stands, or frames.

Forgery of gold and silver plate duty marks, &c. to be felony.

§ 7. "If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any mark, stamp, or die, which shall have been provided, made, or used in pursuance of this or any former act, relating to any duties on gold or silver plate made or wrought in *G. B.*, for the purpose of marking or stamping any such gold or silver plate, in the manner directed by any such act, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression of any such mark, stamp, or die, upon any such gold or silver plate, with intent to defraud H. M., his heirs or successors; or if any person shall mark or stamp, or cause or procure to be marked or stamped, any such gold or silver plate, or any vessel or ware of base metal, with any such forged or counterfeited mark, stamp, or die as aforesaid, or shall transpose or remove, or cause or procure to be transposed or removed, from one piece of gold or silver plate to another, or to any vessel or ware of base metal, any impression made with any mark, stamp, or die, which shall have been provided, made, or used in pursuance of this or any former act, for the purpose of marking or stamping of any such gold or silver plate as aforesaid; or if any person shall sell, exchange, or expose to sale, or export out of *G. B.* any such gold or silver plate, or any vessel or ware of base metal, having thereupon the impression of any such forged or counterfeited mark, stamp, or die, as aforesaid, or any forged, counterfeited, or resembled impression of any mark, stamp, or die, so provided, made, or used as aforesaid, or any impression of any such mark, stamp, or die, which shall have been transposed or removed from any other piece of plate as aforesaid, knowing the same respectively to be forged or counterfeited, or transposed or removed as aforesaid; or if any person shall wilfully and without lawful excuse (the proof whereof shall lie on the person accused) have or be possessed of any such forged or counterfeited mark, stamp, or die, as aforesaid, or shall privately and secretly use any mark, stamp, or die, so provided, made, or used as aforesaid, with intent to defraud H. M., his heirs or successors; then every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person or persons in committing any such offence as aforesaid, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy."

[For the Licence for dealing in Plate, see tit. Excise, *Plate*, Vol. II.]

Players.

[10 G. 2. c. 28.—28 G. 3. c. 30.]

BY stat. 10 *G*. 2. *c*. 28. § 1. Every person who shall, for hire, gain, or reward, act, represent, or perform, or cause, &c. any play or other entertainment of the stage, or any part therein, if he shall not have any legal settlement where the same shall be acted, &c. without authority by patent from the king, or licence from the lord chamberlain, shall be deemed a rogue and vagabond within stat. 12 *Ann*. (which act is repealed, but the same was re-enacted by stat. 17 *G*. 2. *c*. 5.) now repealed by stat. 5 *G*. 4. *c*. 83. so that players are no longer within the penalties of the Vagrant Act. **10 G. 2. c. 28. Vagrant law.**

§ 2. And if any person not having a legal settlement as aforesaid, shall, without such authority or licence as aforesaid, act, &c. or cause to be acted, &c. for hire, &c. any interlude, &c. (as above) he shall, forfeit 50*l*.; and if the said 50*l*. be paid, levied, or recovered, he shall not suffer the above-mentioned penalties.

R. v. *Glossop*, *T*. 2 *G*. 4. 4 *B*. & *A*. 616. The conviction stated, that on, &c. at, &c., *C*. *W*. *W*. came before two justices for the county of *Surrey*, and informed them, that defendant, late of the parish of *St*. *Mary*, *Lambeth*, in the county of *Surrey*, in a certain place in the parish aforesaid, called the *Royal Cobourg* Theatre, without lawful authority of letters patent, and without licence from the Lord Chamberlain, did cause to be acted, for gain and reward, a certain entertainment of the stage, to wit, a certain tragedy, called *Richard* the Third; or, the Battle of *Bosworth Field*, &c. contrary to the statue, &c. The conviction then stated the appearance of defendant, and plea of not guilty; and then proceeded thus: " Nevertheless, upon this same day and year last aforesaid, at the said police office, *Union Hall*, in the said parish of *St*. *Saviour* aforesaid, divers credible witnesses, to wit, one *John Tovey*, one *Junius Brutus Booth*, and one *William Allway*, came before us the said justices, upon their several oaths, on the Holy Gospel of *God*, to them severally and respectively now here and in the presence of the said *John Tovey*, *Junius Brutus Booth*, and *William Allway*, respectively duly administered, depose, swear, and in the presence of the said *Joseph Glossop*, upon their oaths aforesaid, severally affirm and say," &c. In the evidence it was stated, that the *Cobourg* Theatre was in the parish of *Lambeth*; and that an alteration of the play of *Richard* the Third was acted there for money. As to the defendant's causing that play to be represented, the evidence stated was, that *J*. *B*. *B*. became acquainted with defendant as manager and proprietor of the *Cobourg* Theatre; that defendant was seen once or twice at the rehearsals of *Richard*; that another person was stage manager; that *J*. *B*. *B*. engaged with defendant to perform several characters; that *J*. *B*. *B*. applied to defendant for that purpose; and that defendant made him an offer for twelve nights to perform; that the contract was in writing; that *J*. *B*. *B*. afterwards performed there. That at his benefit defendant gave him a cheque for the amount. The conviction concluded that defendant was guilty; and ad-

In a conviction of defendant for causing to be acted at a certain place called the Cobourg Theatre, in the parish of St. Mary, Lambeth, for gain and reward, a certain entertainment of the stage, called Richard the Third, the evidence set forth was, that the defendant was seen once or twice at the rehearsals of Richard; that another person was stage-manager; that defendant engaged J. B. to perform, and gave him a cheque for the amount of his benefit: Held, that this was sufficient to warrant the justices in drawing the conclusion that the defendant caused the play of Richard the Third to be

performed. The conviction also stated, after the appearance and plea of defendant, that divers credible witnesses, to wit, J. B., &c. came before the justices upon their several oaths, to them severally and respectively, and in the presence of the said J. B., &c. duly administered: Held, that taking it altogether, it did substantially appear that the oath was administered to the witnesses in the presence of the magistrates. The evidence also stated, that the Cobourg Theatre was in the parish of Lambeth, and the adjudication of the penalty was to the poor of the parish of St. Mary, Lambeth: Held, that this was no variance, it not appearing that there were two distinct parishes so named.

judged the penalty of 50*l*., one half to the informer, and one half to the poor of the parish of *St. Mary, Lambeth*, being the parish where the offence was committed. The conviction having been removed into the court of K. B. by *certiorari*, three objections were taken: first, that it did not sufficiently appear that the defendant had caused the play of *Richard* the Third to be performed. All that appears is, that he was seen at one or two rehearsals of *Richard*, and that he offered to engage performers, and paid them. But these facts do not show even *primâ facie* that he caused that particular play to be performed which is necessary. Secondly, the witnesses do not appear to have been sworn in the presence of the magistrates, or of the defendant. They are stated to have been sworn in the presence of themselves only. If so, the evidence was improperly taken. Thirdly, the adjudication of the penalty is to the poor of *St. Mary, Lambeth*; whereas the evidence states the *Cobourg* Theatre to be in *Lambeth* only, and, *non constat*, that *Lambeth* and *St. Mary, Lambeth*, are the same parish. —*Abbott* C. J. As to the first objection, it is sufficient to say, that it cannot prevail, unless the evidence stated on the face of the conviction, be such as that no reasonable person could draw the conclusion, that the defendant caused this particular play to be performed. I am very far from thinking that to be the case. The magistrates might very reasonably draw the conclusion, and, having done so, we cannot overturn their decision as to the fact. As to the second objection, the whole forms one sentence, and it is there stated, that the defendant having appeared before the magistrates, and pleaded not guilty, "nevertheless, upon this same day and year, divers credible witnesses, to wit, &c. come before us, upon their several oaths, on the Holy Gospel of *God*, now here in the presence of the said witnesses duly administered," &c. Taking the whole together, I think it substantially appears that the oath was administered in the presence of the magistrates to the witnesses. As to the last objection, I think the evidence sufficient to support the adjudication. It does not appear that *Lambeth* and *St. Mary, Lambeth*, are two parishes; and, unless that be so, it is no variance. If, in the trial of an ejectment, the premises were described to be in *St. Mary, Lambeth*, and the evidence stated them to be in *Lambeth*, I think it would be no variance. And it was so held in *Doe* d. *Tollet* v. *Salter*, (13 *East*, 9.) where the ejectment was for lands in *Farnham*, which, at the trial, were proved in *Farnham Royal*: and there it was held no variance, the defendant not having proved that there were two *Farnhams*. I do not think, therefore, that the magistrates were wrong in the adjudication made by them on this evidence. Upon the whole, therefore, none of these objections are sufficient; and the conviction being regular, must be affirmed. Conviction affirmed.

Tumbling is not an entertainment of the stage within stat. 10 G. 2. c. 28.

Or other entertainment of the stage.] *R.* v. *Handy*, 6 *T. R.* 286. The defendant was convicted in the penalty of 50*l*. under stat. 10 *G*. 2. *c*. 28. for acting, representing, and performing a certain entertainment of the stage called *Tumbling*, &c. at *Birmingham*; which conviction was removed by *certiorari*, in order to take the opinion of the court whether this offence came within the statute. Ld. *Kenyon* C. J. (*inter alia*) said, I do not think that tumbling is an entertainment of the stage within the meaning of the act; it might equally be said, that fencing on a public stage is. By the

3d section of this act a copy of the piece to be represented is to be sent to the lord chamberlain for his approbation, previous to the acting; but no copy could have been given of this entertainment. This is a penal act, and cannot be extended to entertainments which did not exist when the act was made.

By stat. 10 *G.* 2. *c.* 28. § 7. If any interlude, &c. &c. (as before) be acted in any place where wine, ale, beer, or other liquors shall be sold or retailed, the same shall be deemed to be acted for *gain*, *hire*, and *reward*. 10 G. 2. c. 28.

§ 3. No person shall, for hire, gain, or reward, act or cause to be acted any new play or any part therein or any new part added to an old play, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain 14 days before the acting, together with an account when and where it is intended to be acted, signed by one of the managers.

The lord chamberlain may prohibit the same as he thinks fit; and if any such person shall, for hire, &c. act or cause to be acted, without such copy being sent, or against such prohibition, he shall forfeit 50*l.*, and the licence of the playhouse shall be void.

§ 5. And no person shall be authorized to act, except within the liberties of the city of *Westminster*, and where the king shall reside.

But by stat. 28 *G.* 3. *c.* 30. § 1. It shall be lawful for the justices at the general or quarter sessions, at their discretion, to grant a licence to any person making application for the same by petition for the performance of any such tragedies, comedies, interludes, operas, plays, or farces, as are or shall be represented at the patent or licensed theatres in *Westminster*, or have been submitted to the inspection of the lord chamberlain as aforesaid, at any place within their jurisdiction, or within any city, town, or place situate within the limits of the same, for any time not exceeding 60 days, to commence within the next six months, and to be within such four months as shall be specified in the said licence, so as there be only one licence in use at the same time within the jurisdiction so given, and so as such place be not within 20 miles of *London* or *Westminster*, or eight miles of any patent or licensed theatre; or 10 miles of the residence of the king; or of any place within the same jurisdiction, at which, within six months preceding, a licence under this act shall have been had and exercised; or within 14 miles of either of the universities: or within two miles of the outward limits of any city, town, or place, having peculiar jurisdiction; and so also as no licence under this act shall have been had and exercised at the same place within eight months then next preceding. 28 G. 3. c. 30.

§ 2. But no such licence shall be granted to be exercised within any city, town, or place having peculiar jurisdiction, unless proof be made that the majority of the justices acting for such place have at a public meeting signed their consent; or unless an express condition be therein inserted, that the same shall not be valid until approved by the majority of the justices of such place at a meeting holden expressly for that purpose.

§ 3. Nor shall such licence be granted by the justices within any city, town, or place, unless notice shall have been given by the person applying for such licence three weeks before such ap-

plication to the mayor, bailiff, or other chief civil officer of such place, of such intended application.

10 G. 2. c. 28. By stat. 10 *G.* 2. *c.* 28. § 6. All pecuniary penalties, inflicted by this act, may be recovered in the courts at *Westminster*, or before two justices, by the oath of one witness, or confession to be levied by distress; and for want of sufficient distress, the offender to be committed to the house of correction, for a time not exceeding six months, there to be kept to hard labour; or to the common gaol, not exceeding six months, without bail or mainprise: persons aggrieved, by order of the justices, may appeal to the next sessions: the said penalties to be distributed, half to the informer or person suing, and half to the poor.

§ 7. Prosecution to be within six calendar months.

But by special acts of parliament, playhouses are permitted to be erected in particular places.

Poisoning. See **Homicide**, Vol. II.

Police of the Metropolis.

[3 G. 4. c. 55.]

§ I. *Establishment of Offices.—Magistrates.—Salaries.—Attendance.—Fees.—Receivers.—Constables, &c.—Application of Penalties.*
[§ 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.]

II. *Regulation of Fairs.*
[§ 17.]

III. *Regulation as to Coffee Shops.*
[§ 18.]

IV. *Prohibiting the blowing of Horns.*
[§ 19.]

V. *General Form of Conviction, &c.*
[§ 20. 23.]

VI. *Power of Constables to apprehend suspected Persons.*
[§ 21, 22.]

VII. *Penalty for Bullock-hunting.*
[§ 24.]

VIII. *Officers and Patrols of Bow-street to act as Constables.*
[§ 25.]

IX. *Regulation of Watchmen.*
[§ 26, 27, 28.]

§ 1. Establishment of Offices. — Magistrates. — Salaries. — Attendance. — Fees. — Receivers. — Constables, etc. — Application of Penalties.

By stat. 3 *G.* 4. *c.* 55, intituled "*An act for the more effectual administration of the office of a justice of the peace in and near the metropolis, and for the more effectual prevention of depredations on the River* Thames *and its vicinity, for seven years;*" passed 5th *July*, 1822. 3 G.4. c.55.

§ 1. After reciting, that whereas it is expedient that the provisions of stat. 1 & 2 *G* 4. *c.* 118. should be continued and amended: it is enacted, that the several police offices now established in the parishes of *St. Margaret Westminster*, *St. James Westminster*, *St. Mary-le-bone*, *St. Andrew Holborn*, *St. Leonard Shoreditch*, *St. Mary Whitechapel*, and *St. John Wapping*, in the county of *Middlesex*, and *St. Saviour* in the county of *Surrey*, shall be continued; and that the several persons heretofore appointed to execute the duties of a justice of the peace at the police offices now established under the said recited act shall continue to execute the same at the said eight police offices, together with such other justices of the peace for the said counties respectively as may think proper to attend thereat; and that it shall be lawful for H. M., his heirs and successors, upon every vacancy, by death or

The public offices now established shal be continued.

Justices to act

His majesty may appoint

3 G. 4. c. 55.

justices to fill up vacancies.

otherwise, to appoint another fit person, being a justice of the peace of the said counties of *Middlesex* and *Surrey* respectively, to execute the duties of a justice of the peace at the said several police offices, in lieu of the person making such vacancy.

Time of attendance.

§ 2. One or more of the said justices so appointed shall diligently attend at each of the said police offices every day from ten of the clock in the morning until eight of the clock in the evening, and at such other times and places as shall be found necessary, and directed by one of H. M.'s principal secretaries of state; and two of the said justices shall in like manner attend together at each of the said offices from twelve of the clock at noon until three in the afternoon: provided, that no such attendance shall be given on *Sunday*, *Christmas Day*, *Good Friday*, or any day appointed for a public fast or thanksgiving, unless in cases of urgent necessity, or when it shall be directed by such principal secretary of state.

Receiver to be continued in office; and in case of death, H. M. may appoint another. His duty.

§ 3. The present receiver for the said police offices shall continue such receiver, and it shall be lawful for H. M., his heirs and successors, upon any vacancy in the said office of receiver, by death or otherwise, to appoint any other proper person, not being one of the justices appointed to act at either of the said police offices, to be the receiver of the said eight police offices; and the said receiver for the time being shall receive all fees, penalties, and forfeitures and other sums of monies applicable to the purposes of this act, and shall keep an exact and particular account of all such monies as shall be received by him, and shall apply the same quarterly in discharge of the salaries, expences, and charges attending the said police offices, and in carrying this act into execution; and shall make all such contracts and disbursements as shall be necessary for purchasing, hiring, fitting up, and furnishing proper and sufficient houses and buildings wherein the said eight police offices shall be held, in such manner as H. M., his heirs and successors, by and with the advice and consent of his or their privy council, shall think proper to direct and appoint; of which houses and buildings so to be hired or purchased, and of all houses and buildings already hired or purchased for the like purposes, and of the fixtures and furniture thereof, and of all other necessaries to be held or purchased for the purposes of this act, the property acquired therein shall be vested in the receiver for the time being, who shall and may sell, assign, and dispose of the same or any part thereof, under the like directions and appointment, as occasion shall require; and such receiver shall prepare proper plans and estimates of all such contracts and disbursements as shall be necessary for the purposes aforesaid, and shall deliver the same to one of H. M.'s principal secretaries of state; and such receiver shall further do and execute all such other lawful matters and things towards the establishment of the said eight police offices, and towards the carrying this act into execution, as H. M., his heirs and successors, by and with the advice of his or their privy council, shall from time to time think proper to direct.

Justices to employ constables, subject to the approbation of state.

§ 4. The justices appointed as aforesaid, or any two of them, in their respective offices, shall appoint, retain, and employ a sufficient number of fit and able men, subject to the approbation of one of H. M.'s principal secretaries of state, whom they are hereby authorised and empowered to swear in to act as constables, for pre-

serving the peace and preventing robberies and other felonies, and apprehending offenders against the peace; which constables so sworn shall, within the counties of *Middlesex*, *Surrey*, *Essex*, and *Kent*, have all such powers, authorities, privileges, and advantages as any constable duly appointed now has, or hereafter may have, by virtue of any law or statute now made or hereafter to be made; and shall obey all such lawful commands as they shall from time to time receive from the said justices respectively, for the apprehending offenders, or otherwise conducting themselves in the execution of their offices; and such justices may at any time suspend or dismiss from his employment any such constable attached to their respective offices, whom they shall think remiss or negligent in the execution of his duty, or otherwise unfit for the same; and when any such constable shall be so dismissed, or cease to belong to any of the said offices, all powers and authorities vested in him as a constable under and by virtue of this act shall immediately cease and determine, to all intents and purposes whatever. 3 G. 4. c. 55.

§ 5. The justices appointed to the said police office in the parish of *St. John Wapping*, commonly called the *Thames Police Office*, or any two of them, shall (subject to such approbation as aforesaid) appoint, retain, and employ any number of fit and discreet men, not exceeding 30, who, under the name of *Thames* Police Surveyors, shall (being first duly sworn in manner above mentioned) have, within the counties aforesaid, the powers, authorities, privileges, and advantages of a constable as aforesaid; and shall direct and inspect the conduct of the constables attached to the *Thames* police office, and of all persons to be employed in and about ships and vessels in the said river *Thames*, or in or on the several creeks, wharfs, quays, and landing places thereto adjacent, and (subject to the orders of the said last-mentioned justices) shall have power by virtue of their offices to enter at all times, as well by night as by day, into and upon every ship, hoy, barge, lighter, boat, or other vessel (not being then actually employed in H. M.'s service) lying or being in the said river or creeks, and into every part of every such vessel, for the purpose of inspecting, and upon occasion directing the conduct of any constable who may be stationed on board of any vessel, and of inspecting and observing the conduct of all other persons who shall be employed on board of any vessel in or about the lading or unlading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order on board of any such vessel, and for the effectual prevention in all cases of any felonies or misdemeanours being committed, and for the effectual detection of any felonies or misdemeanors which may have been committed, or which such surveyor may have reasonable cause to suspect to have been committed on board any such vessel; and the justices appointed to the said *Thames* police office may at any time suspend or dismiss any such *Thames* police surveyor whom they shall find remiss or negligent in the execution of his duty, or otherwise unfit for the same; and when any such surveyor shall be so dismissed, or cease to belong to the said office, all powers and authorities vested in him as such surveyor under and by virtue of this act, shall immediately cease and determine to all intents and purposes whatever.

Thames police surveyors to be appointed in like manner.

3 G. 4. c. 55. Justices to be allowed a salary of 600*l*. per annum.

§ 6. It shall be lawful for H. M., his heirs and successors, to direct that such sum shall be issued quarterly out of the consolidated fund of the U. K. of *G. B.* and *Ireland*, to the said receiver, as will be sufficient to pay the yearly salary of 600*l.* clear of all fees or deductions, to each of the justices so appointed to attend at the said police offices, for their time and trouble; and such further sums as may be necessary for the expences of the offices, and for the payment of clerks, constables, surveyors, and others therein employed, and for the payment of the expences of the public office in *Bow-street*, and of the magistrates, clerks, and constables, and others therein employed, and of the horse and foot patrol acting under the orders of the chief magistrate of that office; provided that the whole of the said charges shall not exceed the annual sum of 68,000*l.*, over and above the necessary disbursements for purchasing, hiring, repairing, fitting up, and furnishing the houses and buildings wherein the said offices shall be held; and that the said receiver, out of the monies so issued to him, shall and may pay to the constables and surveyors so appointed as aforesaid, for their trouble and attendance, such sum as may from time to time appear reasonable to one of H. M.'s principal secretaries of state, and any extraordinary expences they shall appear to have been necessarily put to in apprehending offenders, and executing the orders of the justices acting under and by virtue of this act; such extraordinary expences being first examined and approved of by the justices attending the police office to which such constables shall be respectively attached; and such further sum for rewarding the extraordinary diligence or exertion of any of the said constables or surveyors, and for compensating them for wounds or severe injuries received in the performance of their duties, and for an allowance to such of them as shall be completely disabled by bodily injury received, or shall be worn out by length of service, as shall be directed by such principal secretary of state.

Further sums to be issued for payment of clerks, constables, &c. and for Bow-street office, and horse and foot patrol.

No justice shall take fees but at the public offices.

§ 7. No justice of the peace for the county of *Middlesex*, county of *Surrey*, city and liberty of *Westminster*, or liberty of the Tower of *London*, or his clerk, or any person on their behalf, elsewhere than at the said police offices, shall directly or indirectly, upon any pretence or under any colour whatever, take or receive any fee, reward, gratuity, or recompence, for any act by him or them done or to be done in the execution of his or their office or employ, as justice of the peace, or clerk as aforesaid, within the limits of the weekly bills of mortality, or within the parishes of *St. Mary-le-bone*, *Paddington*, *St. Pancras*, *Kensington*, and *St. Luke Chelsea*, in the said county of *Middlesex*, upon pain of forfeiting the sum of 100*l.* for every such offence; one moiety thereof to the said receiver, to be applied to the purposes of this act, and the other moiety thereof, with full costs of suit, to the person who shall sue for the same in any of H. M.'s courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, privilege, wager of law, or more than one imparlance shall be allowed: Provided, that nothing in this act contained shall be construed to extend to any fees taken at any general or quarter sessions of the peace, or at any meeting of justices for the purpose of licensing alehouses, or to any fees taken at the said public office in *Bow-street*, or to any fees taken

Penalty, 100*l*.

Not to extend to fees at quarter sessions, or meeting of justices for licensing alehouses,

by the vestry clerk of any parish for the purpose of enforcing the payment of any taxes or assessments arising within the same parish, or for the purpose of hearing and determining any offence cognisable before justices of the peace, by virtue of any statute made and provided for the special regulation or government of such parish.

3 G.4. c.55.

or to fees taken at the office in Bow-street, &c.

§ 8. Enacts, that in some conspicuous part of each of the said police offices, and also of the said public office in *Bow-street*, there shall be affixed a table of the fees which may legally be taken at such offices respectively, and that it shall be lawful for any justice at such offices respectively to refuse to do any act for which any fee shall be demandable, unless such fee shall be first paid; and that if any such act shall be done, and the fee due thereon shall not be paid, it shall be lawful for any justice of the peace to summon the person from whom such fee shall be due, and to make order for payment of the same, with the costs of the proceedings, and in default of payment to levy the same, with the costs of the distress, by warrant under his hand and seal.

Table of fees to be hung up.

§ 9. The justices so appointed to attend at the said police offices, and their clerks respectively, shall, in books to be provided for that purpose, keep a full, true, and particular account of all fees taken and received at each of the said offices, together with all penalties and forfeitures which shall have been recovered, levied, or received in pursuance of any adjudication, conviction, or order had or made at any of the said offices, or any process or warrant issuing from the same; to which books of account the said receiver shall at all times have free access; and the said justices shall, once in every quarter of a year, deliver unto such receiver such account, verified upon oath by such justice or justices, clerk or clerks, or such other person or persons as shall be employed in keeping such accounts respectively, or any part thereof, before some justice of the peace for the said county of *Middlesex*, or county of *Surrey*, and shall pay the amount of all such fees unto such receiver, to be applied in manner hereinbefore mentioned.

Account of fees and forfeitures received at the police offices shall be delivered quarterly to the receiver, and the amount thereof paid to him.

§ 10. All such penalties and forfeitures, and shares of penalties and forfeitures, as are by any act now in force, or shall be by any future act (unless it shall contain express words to the contrary) limited and made payable to H. M., his heirs and successors, or to any description of persons other than the informer or informers who shall sue for the same, or any party aggrieved, and which shall be recoverable in a summary way before a justice or justices of the peace, and which shall be recovered or adjudged before any justice or justices at either of the said eight police offices, or at the said public office in *Bow-street*, shall be accounted for and paid into the hands of the said receiver, by the justice, clerk, constable, officer, or other person or persons who shall levy or receive the same, to be applied by such receiver in manner hereinbefore mentioned.

All penalties (except to informers or parties aggrieved), recovered at the police offices, shall be paid to the receiver.

§ 11. If the justices appointed as aforesaid, or any other person having received any such fees at any of the said police offices, shall neglect to account for and pay the same in manner aforesaid; or if any justice, justice's clerk, constable, officer, or other person, who shall levy or receive such penalties or forfeitures, or shares of penalties or forfeitures, shall neglect to pay the same into the hands of such receiver; or if any person, having resigned any such office

If fees and penalties are not accounted for, receiver may sue for the same in any court of record.

3 G. 4. c. 55. of receiver, or having been removed from the same, shall neglect, within 21 days after notice for that purpose, to account for and pay into the hands of the succeeding receiver all such sums of money as shall remain in his hands applicable to the purposes of this act; it shall be lawful for such receiver for the time being, in his own proper name only, or by his name and description of office, to sue for and recover the same, with double costs of suit, in any of H. M.'s courts of record at *Westminster*, by action of debt, in which action it shall be sufficient for such receiver to declare as for money had and received to the use of such receiver for the purposes of this act; and the defendant in such action may, at the discretion of any judge of such court, be held to special bail, in such competent sum as such judge shall order and direct; and in any such action the court in which such action shall be brought may, if such court shall think proper, at the instance of either of the parties, refer the account in dispute, in a summary manner, to be audited by any officer of the court or other fit person at their discretion, who may examine both plaintiff and defendant upon oath (which oath the said referee shall have power to administer); and upon the report of such referee, unless either of the parties shall show good cause to the contrary, such court may make a rule, either for the payment of such sum as upon such report shall appear to be due, or for staying the proceedings in such cause, and upon such terms and conditions as to the same court shall appear reasonable and just; or may order judgment to be entered up by confession, for such sum as upon such report shall appear to be due.

Receiver may sue for money in the hands of deceased receivers, and recover from executors.

§ 12. In case of the death of any such receiver, or of any person having resigned or been removed from such office, or of any of the other persons whom the said receiver for the time being is authorised to sue as aforesaid, in every such case, the receiver for the time being may, in his own proper name only, or by his name and description of office, sue for and recover such sum of money as shall have been remaining in the hands of such deceased receiver or other person, applicable to the purposes of this act, or the executors or administrators of such person deceased; in which action it shall be sufficient for the plaintiff to declare that the deceased was indebted to the plaintiff for money had and received to his use for the purposes of this act, or that the deceased died possessed of money had and received for the purposes of this act, whereby an action accrued to the plaintiff to demand and have the same of such executors or administrators; and the like action shall and may be brought against any executors or administrators of executors or administrators; in all which actions the defendant or defendants may plead in like manner, and avail themselves of the like matters in their defence, as in any action founded upon simple contracts of the original testator or intestate; and in all actions to be brought by such receiver by virtue of this act, proof of the plaintiff's acting in the execution of such office shall be sufficient evidence of his holding the same, unless the contrary shall be shown in evidence by the defendant or defendants in such action.

Receiver to render accounts quarterly, or

§ 13. Such receiver shall, every three months, and oftener if required, deliver to the lord high treasurer, or the commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, for the

time being, a full and particular account of all monies by him received and paid as aforesaid, with vouchers for the same; which account shall be verified upon oath, before some justice or baron of one of H. M.'s courts of record at *Westminster;* and such receiver, for his care and pains in the execution of such office, shall and may retain to his own use, out of the monies so received by him as aforesaid, a sum not exceeding 400*l*.

3 G.4. c.55.

oftener, if required. Allowance to the receiver.

§ 14. No justice appointed as aforesaid shall, during his continuance in such appointment, be capable of being elected, or of sitting as a member of the house of commons; and no justice, receiver, surveyor, or constable, appointed by virtue of this act, shall, during the time that he shall continue in his office respectively, or within six months after he shall have quitted the same, be capable of giving his vote for the election of a member to serve in parliament for the counties of *Middlesex* or *Surrey*, or for the city and liberty of *Westminster*, or the borough of *Southwark* respectively; nor shall by word, message, writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to be a member to serve in parliament for the said counties, city, or borough; and every such justice, receiver, surveyor, or constable, offending therein, shall forfeit the sum of 100*l*.; one moiety thereof to the informer, and the other moiety thereof to the use of the poor of the parish or place where such offence shall be committed; to be recovered by any person that shall sue for the same, by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, in which no essoign, protection, privilege, wager of law, or more than one imparlance shall be allowed; such action to be brought within one year after such offence committed: provided that nothing in this act shall extend to subject any such justice, receiver, surveyor, or constable, to any penalty for any act done by him at or concerning any of the said elections, in the discharge of his duty in the said respective capacities.

Justices not to sit in parliament. No justice, receiver, surveyor, or constable, to vote at certain elections.

Penalty, 100*l*.

§ 15. Where by any law now in being, or hereafter to be made, any act is directed or authorised to be done by any justice or justices of the peace residing in, or near, or next the parish or place where any offence or other matter cognisable before them shall be committed or shall arise, the same jurisdiction shall and may be exercised by a justice or justices acting in such of the said police offices as may be situated next or near such parish or place.

Acts directed to be done by a justice where an offence is committed, may be done by a justice in the next police office.

§ 16. It shall be lawful for H. M., his heirs and successors, by and with the advice of his or their privy council, to make such alterations in the places where any of the said police offices shall be situated, or to make such alterations in the hours of attendance therein, and to make all such other regulations to be observed in conducting the same, as he or they from time to time shall think proper.

H. M. in council may alter the situation of the offices.

§ II. Regulation of Fairs.

By stat. 3 *G*. 4. *c*. 55. § 17. After reciting that whereas divers fairs are held within the city and vicinity of *London*, by charter or prescription, and other fairs without any lawful authority,

3 G.4. c.55. For the regulation of fairs.

3 G.4. c.55.

which lead to scenes of riot, disorder, debauchery, and crime, and it is expedient to regulate such fairs as are legally held, and to suppress such as have no lawful origin; it is enacted, "that* all fairs held within ten miles of *Temple Bar*, all business and amusements of all kinds, shall cease at the hour of eleven in the evening, and not recommence earlier than the hour of six in the morning; and that if any house, shop, room, booth, standing, tent, caravan, waggon, or other place, shall, during the continuance of any such fair as aforesaid, be open within the hours hereinbefore prohibited, for any purpose of business or amusement in the place where such fair shall be held, or within 300 yards thereof, then it shall be lawful for any constable, or other peace officer, within his jurisdiction, to take into custody the master or mistress, or other person having the care, government, or management of any such house, shop, room, booth, standing, tent, caravan, waggon, or other place, and also every person being therein, and who shall not quit the same forthwith upon being bidden by any such constable or other peace officer so to do, and to convey every such person so taken, as soon as conveniently may be, before a justice of the peace, who shall proceed to hear the complaint in a summary way; and every person convicted before any such justice, as the master, mistress, or person having the care, government, or management of any such house, shop, room, booth, standing, tent, caravan, waggon, or other place, shall forfeit and pay the sum of 5*l.*; and every person so convicted as having been therein, and not quitted* the same forthwith upon being bidden by a constable or other peace officer so to do, shall forfeit and pay the sum of 40*s.*; and if the party so convicted shall not immediately pay the penalty, the justice shall commit him or her to hard labour in the house of correction for any space of time not exceeding three months, nor less than six days, unless the penalty shall be sooner paid; and if there shall appear to any two justices, within their respective jurisdictions, reason to believe that any fair usually held within the distance aforesaid has been held without charter, prescription, or other lawful authority, or that any fair lawfully held within the said distance has been usually held for a longer period than is warranted by charter, prescription, or other lawful authority, it shall be competent to them to summon the owner or occupier of the ground upon which such fair is usually held, to appear before such justices as may be present at some petty sessions, to be held at the time and place to be specified in the summons, not less than eight days after the service of the summons, to show his right and title to hold such fair, or to hold such fair beyond a given period (as the case may be); and if such owner or occupier shall not attend in pursuance of such summons, or shall not show to the justices present at such petty sessions sufficient cause to believe that such fair has been held by lawful right and title, for the whole period during which the same has been usually held, such justices shall declare, in writing, such fair to be unlawful, either altogether or beyond a stated period, (as the case may be,) and shall give notice of such their declaration, by affixing copies thereof on the parish church, and on the most public places in and near the ground where such fair has been usually held; and if after such notices shall have been affixed for the space of six days any attempt shall be made to hold such fair,

* *Sic.*

Penalty on keeping open houses, &c. within the hours prohibited, 5*l.* for the master, and on any person refusing to quit, 40*s.*

* *Sic.*

Fairs held without lawful authority to be enquired into,

and in certain cases, declared unlawful.

If declared unlawful, booths,

if it shall be declared altogether unlawful, or to hold it beyond the prescribed period, if it shall be declared unlawful beyond a certain period, any justice of the peace within his jurisdiction may, by his warrant, direct any constable or other peace officer to remove every booth, standing, and tent, and every carriage, of whatsoever kind, conveyed to or being upon such ground for the purpose of holding or continuing such fair, and to take into custody every person erecting, pitching, or fixing, or assisting to erect, pitch, or fix, any such booth, standing, or tent, and every person driving, accompanying, or conveyed in every such carriage, and every person resorting to such ground with any exhibitions, shows, swings, roundabouts, whirligigs, or other instruments of gambling or amusement, and to carry every person so taken before the justice granting such warrant, or before some other justice, who shall proceed to hear the complaint in a summary way; and every person convicted before any such justice of any of the offences last aforesaid, shall forfeit and pay any sum not exceeding 10*l.*, nor less than 20*s.*; and if the party so convicted shall not immediately pay the penalty, the justice shall commit him or her to hard labour in the house of correction, for any space of time not exceeding three months, nor less than six days, unless the penalty shall be sooner paid: Provided nevertheless, that if the owner or occupier of the ground whereon any such fair has been usually held, shall, when summoned before the justices at their petty sessions as aforesaid, enter into a recognisance in the penal sum of 200*l.* (which recognisance such justices are hereby authorised to take), with condition to appear in the court of K. B. on the first day of the then next term, and to answer to any information in the nature of a *quo warranto*, which H. M.'s attorney or solicitor-general may exhibit against such owner or occupier, touching the right and title to such fair, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, which costs the said court is hereby authorised to award, then notwithstanding the justices shall declare such fair to be unlawful, they shall forbear from giving notice of such their declaration, and from taking any further measures thereon, until judgment shall be given by the said court against the right and title to such fair; and the justices taking such recognisance shall forthwith transmit the same to one of H. M.'s principal secretaries of state, to the end that the same may be filed in the said court, and such further directions may be given thereon as to such secretary of state may seem fit and necessary."

3 G.4. c.55.

&c. to be removed.

Penalty not exceeding 10*l.* nor less than 20*s.*

On entering into recognisance, question as to right of title to fair may be tried in the King's Bench.

§ III. Regulations as to Coffee Shops.

By stat. 3 *G.* 4. *c.* 55. § 18. after reciting that whereas it hath become a practice of late to open shops or rooms for the sale or under the pretence of selling ready-made coffee, tea, and other liquors, and to keep such shops or rooms open during the whole or greatest part of the night, thereby affording shelter and accommodation to thieves, prostitutes, and other disorderly persons, and tending greatly to the encouragement of robberies, and to the concealment of stolen property; it is enacted, "That no shop, room, or place, for the purpose aforesaid, within the city

3 G.4. c.55. Regulations as to coffee shops.

3 G.4. c.55.

of *London* or the liberties thereof, within the limits of the weekly bills of mortality, or within any of the parishes hereinbefore mentioned, shall be kept open after the hour of eleven at night during any part of the year, nor opened before the hour of four in the morning, between *Lady Day* and *Michaelmas*, or before six in the morning between *Michaelmas* and *Lady Day;* and if any such shop, room, or place, shall be open within the hours herein before prohibited, or being shut up, if any person shall during those hours be found therein, except the persons actually dwelling there, or having lawful excuse for being there, then the master, mistress, waiter, or other person having the care, government, or management of such shop, room, or place, whether he or she be the real owner or keeper thereof or not, shall forfeit and pay any sum not exceeding ten pounds, nor less than twenty shillings, upon conviction of any such offence before any justice of the peace, by confession or upon the oath of one or more credible witness or witnesses; and if the party so convicted shall not immediately pay the said penalty, the justice shall commit him or her to hard labour in the house of correction, for any space of time not exceeding three months, nor less than six days, unless the said penalty shall be sooner paid; and the said penalty, when paid, shall be distributed, one moiety to the informer, and the other moiety to the chamberlain of the city of *London*, if the offence be committed in the said city, and if out of the said city, then to the said receiver for the purposes of this act: Provided always, that nothing herein contained shall apply to or affect any house duly licensed for the sale of wines and spirituous liquors; and that no such conviction shall exempt the owner, keeper, or manager of any such shop, room, or place, from any penalty or penal consequence whereto he or she may be liable for keeping a disorderly house."

Penalty not exceeding 10*l.* nor less than 20*s.*

Application of penalty.

Not to affect houses for the sales of wines and spirits.

§ IV. Prohibiting the Blowing of Horns.

Prohibiting the blowing of horns.

By stat. 3 *G.* 4. *c.* 55. § 19. it is enacted, that "if any person shall, within the city of *London* and liberties thereof, or within the limits and parishes aforesaid, blow any horn, or use any other noisy instrument for the purpose of hawking, selling, or distributing any article whatsoever, it shall be lawful for any constable, headborough, patrol, watchman, or other person, to apprehend every person so offending, and convey him before any justice of the peace, who shall proceed to examine upon oath any witnesses appearing to give evidence touching such offence; and if the party accused shall be convicted of such offence, then and in every such case he shall for every such offence forfeit and pay any sum not exceeding 40*s.*, nor less than 10*s*, to be applied in such manner as such justice shall direct; and in case the offender shall not upon conviction forthwith pay the penalty, such justice is hereby required to commit such offender to the house of correction, there to be kept to hard labour for any time not exceeding ten days, nor less than three days, unless the penalty shall be sooner paid."

Penalty not exceeding 40*s.* nor less than 10*s.*

§ V. General Form of Conviction, &c.

By stat. 3 *G.*4. *c.*55. § 20. it is enacted, that "every conviction for the offences aforesaid shall be in the following form of words, or in some other form of words to the like effect: — 3 G.4. c.55. Form of conviction.

BE it remembered, that on the ——— day of ———, in the year of our Lord ——— A.B. is brought before me, [or *having been duly summoned, has neglected to appear before me*], C. D. *esquire, one of his majesty's justices of the peace in and for the county of ———* [or *city*, or *liberty*, or *place*, as the case may be], *and is charged before me the said justice with having* [here describe the offence], *and it appearing to me the said justice, upon the confession of him the said* A. B. [or, *upon the oath of a credible witness*, as the case may be] *that the said* A. B. *is guilty of the said offence; I do therefore adjudge the said* A. B. *to forfeit and pay the sum of ———; and in default of payment to be imprisoned in the house of correction at ———, and there kept to hard labour for the term of ———, unless the said penalty shall be sooner paid; and I do hereby direct, that the said penalty shall, when paid, be applied to* [here direct the mode]. *Given under my hand and seal the day and year first above written.*

§ 23. No conviction under this act, for any of the offences aforesaid, shall be quashed or set aside or adjudged void or insufficient for want of form; nor shall the same be removed by *certiorari* into H. M.'s Court of K. B.; but in all cases, where the penalty shall exceed the sum of 5*l.*, or one month's imprisonment, if any person shall think himself aggrieved by such conviction, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county or city wherein the cause of complaint shall have arisen, such person at the time of his conviction entering into a recognisance with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions assembled; and in case any such conviction of a reputed thief shall be affirmed at such sessions, the said justices may adjudge the offender to be a rogue and vagabond, and proceed against him or her in the same manner as they might have done if such rogue and vagabond had been committed to the house of correction until such general or quarter sessions; and in case such offender shall not appear pursuant to the said recognisance, the person so convicted by such justice shall be deemed an incorrigable rogue, within the intent and meaning of stat. 3 *G.*4. *c.*40.; and the justices at such sessions, or any two of them, shall issue their warrant to apprehend and commit the person so deemed an incorrigible rogue to some house of correction or common gaol within their jurisdiction, there to remain until the next general or quarter sessions for the said county, city, or liberty, as the case may be, then and there to be further dealt with according to law.

Conviction not to be quashed for want of form, or removeable by *certiorari*. Appeal to quarter sessions, &c.

§ VI. Power of Constables to apprehend suspected Persons.

By stat. 3 *G.* 4. *c.* 55. § 21. After reciting that whereas ill-disposed and suspected persons and reputed thieves frequent the

Constables may apprehend suspected persons.

3 G.4. c.55. parks, fields, streets, highways, and places adjacent, and divers places of public resort, and the avenues leading thereto, within the city of *London* and the liberties thereof, the limits of the weekly bills of mortality, and the said parishes of *Saint Mary-le-bone*, *Paddington*, *Saint Pancras*, *Kensington*, and *Saint Luke Chelsea*, and also the said river *Thames*, and the docks and creeks, quays and warehouses adjacent thereto, and the streets, highways, and avenues leading to the said river, docks, creeks, quays, and warehouses, with intent to commit felony on the persons or property of H. M.'s subjects; and although their evil purposes are sufficiently manifest, the power of H. M.'s justices of the peace to demand of them sureties for their good behaviour, hath not been of sufficient effect to prevent them from carrying their evil purposes into execution; it is enacted, "that it shall be lawful" for any constable, headborough, patrol, watchman, or other person, to apprehend every such suspected person, or reputed thief, and convey him or her before any justice of the peace; and if it shall appear before the said justice, upon the oath of one or more credible witness or witnesses, that such person is a person of evil fame, and a reputed thief, and such person shall not be able to give a satisfactory account of himself or herself, and of his or her way of living, and it shall also appear to the satisfaction of the said justice, that there is just ground to believe that such person was in or on such park, field, street, highway, river, dock, creek, quay, warehouse, avenue, or other place as aforesaid, with such intent as aforesaid, every such person shall be deemed a rogue and vagabond, within the intent and meaning of an act made in the present session, for consolidating and amending the laws relating to rogues, vagabonds, and other idle and disorderly persons." See the general saving for this act, by stat. 5 *G*.4. *c*. 83. § 21.

Form of conviction. 22. Every such conviction shall be in the following form of words, or in some other form of words to the like effect:—

BE it remembered, that on the ——— *day of* ——— *in the year of our Lord* ——— A. B. *is brought before me* C. D., *esquire, one of his majesty's justices of the peace in and for the county of* ——— [or, *city*, *liberty*, or *place*, as the case may be], *and charged before me the said justice with being a rogue and vagabond, he the said* A. B. *having been apprehended on the* ——— *day of* ——— *in a certain* ——— *called* ——— *in the parish of* ——— *in the said county* [or *city*, *et cetera*, as the case may be]; *and it appearing to me the said justice, on the oath of* ———, *a credible witness, that the said* A. B. *is a person of evil fame and a reputed thief, and the said* A. B. *on his examination before me not being able to give a satisfactory account of himself, or of his way of living, and it is also appearing to the satisfaction of me the said justice, that there is just ground to believe that the said* A. B. *was in such* ——— *as aforesaid with intent to commit felony on the person or property of his majesty's subjects there being; I do, therefore, in pursuance of an act passed in the third year of the reign of king*

Ante, 95. George *the fourth*, *intituled* [here insert the title of this act] *convict him the said* A. B. *of the said offence, and adjudge him to be a rogue and vagabond, within the intent and meaning of the statute made in the fifth year of the reign of king* George *the fourth*, *intituled*, An act for the punishment of idle and disorderly persons and rogues and vagabonds, in that part of *Great Britain* called

England, and that he, for his said offence, be committed to the house of correction at ——— *until the next general* [or *quarter*, as the case may be] *sessions of the peace to be holden for the said county* [*city*, or *place*, as the case may be] *then and there to be further dealt with according to law.* [If the party be committed for a less time than until the sessions, then say, *there to remain for the space of* ———.] *Given under my hand and seal, the day and year first above written.* 3 G. 4. c. 55.

§ VII. Penalty for Bullock-hunting.

By stat. 3 *G.* 4. *c.* 55. § 24. After reciting, that whereas by an act passed in the 21st year of his late majesty's reign, intituled *An Act to prevent the mischiefs that arise from driving cattle within the cities of* London *and* Westminster, *and liberties thereof, and bills of mortality*, a penalty not exceeding 20*s.* nor less than 5*s.* is imposed on every person not being hired or employed to drive cattle, who pelts with stones or brickbats, or by any other means drives or hunts away, or sets any dog or dogs at any ox, heifer, cow, steer, or other cattle, without the consent of the owner of the same, or his servant: and whereas the said penalty has been found insufficient to deter evil-disposed persons from the practice of hunting bullocks; it is therefore enacted, "that if any person shall pelt, drive, or hunt, or set any dog or dogs at any ox, heifer, cow, or steer, contrary to the provisions of the said last-recited act, such person shall, upon being convicted thereof according to the same act, forfeit and pay on the *first* conviction, any sum not exceeding 40*s.* nor less than 20*s.*, and on the *second* and every future conviction, any sum not exceeding 5*l.* nor less than 50*s.* to the person or persons who shall prosecute such offender to conviction, and in default of payment shall be committed to the house of correction, there to be kept to hard labour for any time not exceeding two months on the first conviction, nor five months on the second and every future conviction, in the manner prescribed by the said last-recited act."

Penalty for bullock-hunting increased. 21 G. 3. c. 67.

§ VIII. Officers and Patrols of Bow-street, to act as Constables.

By stat. 3 *G.* 4. *c.* 55. § 25. After reciting, that whereas it is expedient that the officers of the said public office in *Bow-street*, and the horse and foot patrol acting under the orders of the chief magistrate of that office, shall be sworn in as constables, and be empowered to act within the said several counties of *Middlesex, Surrey, Essex, and Kent*; it is enacted, "that it shall and may be lawful for the said chief magistrate to administer to such persons respectively an oath duly to execute the office of constable within the counties aforesaid; and each of such persons, being sworn, shall have power to act as a constable for the preservation of the peace, and for the security of property against felonious and other unlawful modes of obtaining the same, within any and every of the said several counties, and for apprehending offenders against the peace, as well by night as by day; and shall have all such powers and authorities, privileges and advantages, as any constable duly appointed now has or hereafter may have within his constablewick; provided always, that when any such constable shall be dismissed

Officers and patrols of Bow-street office to act as constables.

3 G.4. c.55. from his said employment, or cease to belong to the said public office in *Bow-street*, all powers and authorities, allowances, emoluments, privileges, and advantages, vested in the persons so dismissed or ceasing to belong to the said office, shall immediately cease and determine."

§ IX. Regulation of Watchmen.

For regulation of parish watch men, &c.

By stat. 3 *G.* 4. *c.* 55. § 26. It is enacted for the purpose of ensuring competency and fidelity in the watchmen and patrols employed by the aldermen and common council of the city of *London*, and the vestries and other parochial and local authorities within the limits of the weekly bills of mortality and the parishes hereinbefore mentioned, when any case of incompetency, negligence, misconduct, or delinquency, shall appear to any two justices of the peace acting within the said city or limits and parishes, against any such watchman or patrol, it shall be lawful for the said two justices, by writing under their hands and seals, to declare the same, and to pronounce the man so found incompetent or guilty of such negligence, misconduct, or delinquency, to be either suspended for a limited time, or absolutely dismissed from his office, as they shall think proper, and to give notice of such suspension or dismissal to the alderman* and common council of the ward, if in the city of *London*, or to the vestry or other authority by whom such watchman or patrol was appointed, if elsewhere; and every such watchman or patrol shall be incapable of being re-appointed, either for the same or any other ward, parish, or place, while such suspension or dismissal shall remain in force; and if no watchman or patrol shall be appointed by the alderman* and common council of the ward, or by the vestry or other proper authority, at their next meeting after such notice shall be delivered to the deputy of the ward, or to the clerk or secretary of such vestry, or other proper authority, or left at the house or office where their business is usually transacted, the said justices shall appoint a successor, who shall exercise and enjoy the said duties and powers, and receive the same pay, emolument, and allowances, as if regularly appointed..

* *Sic.*

* *Sic.*

No watchman or patrol to be appointed above the age of 40, &c.

§ 27. No man shall hereafter be appointed within the limits and parishes aforesaid, by any authority whatsoever, to be a watchman or patrol, who shall be above the age of 40 years, unless he shall have been previously and up to the time of such appointment employed in the said horse or foot patrol.

Allowance to superannuated watchmen in London.

§ 28. It shall be lawful for the aldermen and common council of the respective wards in the city of *London* and liberties thereof, to make such allowance to superannuated watchmen, beadles, or patrols, as they shall think proper, to be paid out of the watch rate to be raised in such wards respectively.

§ X. Power of Constables at Watch-houses to take Bail at Night.

Enabling constables at watchhouses

By stat. 3 *G.* 4. *c.* 55. § 29. It is enacted for the better administration of the police within the limits and parishes aforesaid, it shall be lawful for the constable or headborough attending at any

watchhouse within those limits and parishes, between the hours of eight in the afternoon and six in the forenoon, to take bail by recognisance, without any fee or reward, from any person who shall be brought into his custody within the said hours without the warrant of a justice, charged with any petty misdemeanor, if such constable shall deem it prudent to take such bail for the appearance of such person before the justices at the said public office in *Bow-street*, or at one of the said police offices, to be specified in the recognisance, for examination, at the hour of ten in the forenoon next after such recognisance shall be taken, unless that hour shall fall on a *Sunday*, or on one of the days of absence allowed by this act, and in that case at the like hour on the succeeding day; and that every recognisance so to be taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before one of H. M.'s justices of the peace; and the constable or headborough shall enter in a book, to be kept for that purpose in every watchhouse, the names, residence, and occupation of the party and his sureties entering into such recognisance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up, to be signed by the constable or headborough, and shall return the same to the next general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party has not complied with the obligation therein contained, and the clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in the sessions of the peace; and if the party not appearing shall apply, by any person on his behalf, to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognisance to such further time as he shall appoint; and when the matter shall be heard and determined, either by the dismissal of the complaint, or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognisance for the party's appearance before the justices shall be discharged without fee or reward.

3 G. 4. c. 55.

to take bail at night.

In default of appearance recognisance to be forfeited.

Time of hearing may be postponed.

§ XI. Damaging Boats belonging to the Thames Police — Surveyor's Power to search Vessels — Power to seize Gunpowder — Masters of Vessels in possession of loaded Guns within certain Hours.

By stat. 3 *G.* 4. *c.* 55. § 30. it is enacted, that if any person shall wilfully destroy or damage, or endeavour to destroy or damage, or be wilfully concerned in destroying or damaging, or endeavouring to destroy or damage, any boat belonging to or hired or employed by or by the authority of the justices appointed to attend at the *Thames* police office, or any part of the sails, oars, or other tackle, stores, goods, or furniture contained in or belonging to

Penalty for damaging, &c. boats belonging to *Thames* police.

3 G.4. c.55. any such boat, every person so offending shall forfeit and pay for every boat so destroyed or damaged, or attempted to be destroyed or damaged, or of which any of the tackle or other contents shall have been so destroyed or damaged, or attempted to be destroyed or damaged, any sum not exceeding 30*l.* or shall suffer imprisonment for any time not exceeding three months, over and above any such damages as may be recoverable by action at law against any such offender.

Surveyors having just cause to suspect felony may enter on vessels and take up suspected persons.

§ 31. It shall be lawful for every such *Thames* police surveyor (subject to the orders of the said justices appointed to attend the *Thames* police office), having just cause to suspect that any felony has been or is about to be committed in or on board of any ship, hoy, barge, lighter, boat, or other vessel, lying or being in the said river, docks, or creeks, to enter at all times, as well by night as by day, into and upon every such ship, hoy, barge, lighter, boat, or other vessel, and therein to take all necessary measures for the effectual prevention or detection of all felonies which he has just cause to suspect to have been or to be about to be committed in and upon the said river, docks, or creeks, and to apprehend and detain all persons suspected of being concerned in such felonies, and also all property so suspected to be stolen, and the same to produce before some justice, to be dealt with according to law.

Unlawful quantities of gunpowder may be seized.

§ 32. It shall be lawful for every such *Thames* police surveyor, at any time between sun-rising and sun-setting, to enter any ship or vessel (except H. M.'s ships) in the said river, docks and creeks, and to search the same for unlawful quantities of gunpowder, and also to exercise the same powers of seizing, removing to proper places, and detaining all such unlawful quantities of gunpowder found on board any such ship or vessel, and the barrels or other packages in which such gunpowder shall be, as are given to persons searching for unlawful quantities of gunpowder under a warrant of a justice, by virtue of an act passed in the 12th year of (12 G.3. c.61.) his late majesty's reign, intituled *An Act to regulate the making, keeping, and carriage of gunpowder within* G. B. *and to repeal the laws heretofore made for any of those purposes.*

Where boats are suspected to have any naval stores, stolen ropes, &c. on board, they may be detained, and the persons suspected of having conveyed the stolen articles on board, may be taken before a justice, &c.

§ 33. It shall be lawful for any *Thames* police constable or surveyor, or any other peace officer within his jurisdiction, to stop, search, and detain in some place of safety, any boat, craft, or vessel which there shall be reason to suspect of having therein any of H. M.'s naval stores, or any ropes, cordage, tackle, apparel, furniture, stores, materials, or any part of any cargo or lading, or any lead, iron, copper, brass, bell-metal, pewter, solder, or other article, stolen or unlawfully procured; and also to apprehend, search, and detain any person who may be reasonably suspected of having or conveying any such articles in such boat, craft or vessel, or on land, and to convey every such person so apprehended (as soon as conveniently may be) before some justice of the peace; and if such person shall not give an account to the satisfaction of such justice how he or she came by the same, then the person so apprehended shall be deemed and adjudged guilty of a misdemeanour, and shall suffer as herein-after mentioned; and such boat, craft, or vessel, with her tackle, apparel, furniture, and loading, shall, upon such conviction, be forfeited and disposed of as is herein-after directed.

§ 34. If on information given on oath it shall appear to any justice that there is reasonable cause for suspecting that any such articles as aforesaid, after having been so stolen or unlawfully obtained, are concealed or otherwise lodged in any dwelling-house, warehouse, yard, garden, or any other place, it shall be lawful for such justice, by special warrant under his hand and seal, directed to any *Thames* police constable or surveyor as aforesaid, or other constable within his jurisdiction, to cause every such place to be searched at any time of the day, or by night, if power for that purpose be especially given in and by such warrant; and the said justice, if it shall appear to him necessary, may moreover empower such constable or surveyor, with any such assistance as to the said justice may appear, or by such constable or surveyor may be found necessary (such constable or surveyor having previously made known such his authority), to use force for the effecting of such entry, whether by breaking open doors or otherwise; and if upon search thereupon made any such suspected article shall be found, then to convey the same forthwith to and before a justice, or to guard the same on the spot while the offenders are taken before a justice, or otherwise disposed thereof in some place of safety, subject to the orders of a justice in manner above mentioned; and moreover to apprehend and convey before the said justice the person or persons in whose house, lodging, or other place the same shall so have been found, as also every other person found in such house, lodging, or place, who shall appear to have been privy to the depositing of such article in such place, knowing or having reasonable cause to suspect the same to have been stolen or otherwise unlawfully obtained; and if such persons respectively shall not immediately, or within some reasonable time to be assigned by the justice, make it appear to the satisfaction of the justice by what lawful means such article or articles came to be deposited or situated in such place as aforesaid, without any default on the part of such persons respectively, then and in such case the person or persons in whose house, lodging, or other place any such suspected article was found, and also every other person so appearing to have been privy to the depositing thereof, knowing or having cause to suspect the same to have been stolen, or otherwise unlawfully obtained, shall be deemed and adjudged guilty of a misdemeanour, and shall suffer as herein-after mentioned.

3 G.4. c.55. On information that there is reasonable cause for suspecting that any of the cargo of any vessel, or any of his majesty's stores, &c. have been unlawfully obtained, and are concealed, how to proceed.

§ 35. If any person, on being so produced before any justice to give an account of any articles seized and detained in any of the cases aforesaid, shall declare himself or herself to have bought, received, or otherwise obtained such articles of some other person, such justice is hereby authorised and required to examine every such other person, and also every other prior purchaser or pretended purchaser; and if upon the whole evidence it shall appear to such justice, that the party suspected, or the party upon whom such articles were found, or the person so produced, or such prior purchaser or pretended purchaser, or any of them, at the time of his or her receiving such articles into his or her possession, did believe or had reasonable cause to believe that such articles, or any part thereof, were at any time and by any person unlawfully come by or obtained, it shall be lawful for such justice to adjudge

Party from whom goods bought to be examined by the justice.

If goods are found to be unlawfully obtained, party adjudged to be guilty of a misdemeanor.

3 G. 4. c. 55.

Masters of vessels between Westminster bridge and Blackwall having on board guns loaded with ball, or discharging guns before sun-rising or after sun-setting, or heating tar and other combustible matter on board of vessels, shall forfeit not exceeding 5*l.*

Appeal to quarter sessions.

such party to be guilty of a misdemeanor, and the party so convicted shall thereupon suffer as herein-after mentioned.

§ 36. And for the more effectual prevention of accidents by fire and other mischiefs upon the said river, it is enacted, that if any master or commander, or other officer of any ship or vessel (except H. M.'s ships,) shall, while such ship or vessel shall lie or be in the said river between *Westminster Bridge* and *Blackwall*, keep any gun on board such ship or vessel shotted or loaded with ball, or cause to permit to be fired or discharged any gun on board such ship or vessel, before sun-rising or after sun-setting, such master, commander, or other officer shall, for every such gun so kept shotted or loaded, forfeit the sum of five shillings; and for every gun so fired or discharged, the sum of ten shillings; and if any master, commander, or other officer of any such ship or vessel, or any other person on board of the same, or any person on board of any barge, lighter, boat, or other craft or vessel, shall, while such ship, barge, lighter, boat, craft, or vessel shall lie or be in the said river between *Westminster Bridge* and *Blackwall*, heat or melt, or cause or permit to be heated or melted by fire, logger-heat shot, or any other means, on board any ship, barge, lighter, boat, craft, or vessel whatever, any pitch, tar, rosin, grease, tallow, oil, or other combustible matter, every person so offending shall for every such offence forfeit any sum not exceeding five pounds; and any one of the justices appointed to attend at the *Thames* police office, or any other justice within his jurisdiction, is hereby authorised and required, upon any information exhibited or complaint made in that behalf, within ten days next after any such offence shall have been committed, to summon the party accused, and also the witnesses on either side, or after oath made of the commission of any of the facts above mentioned by one or more credible witness or witnesses, to issue a warrant to apprehend the party accused, and upon the party's appearance or contempt in not appearing (upon the proof of notice given), such justice shall proceed to the examination of the witness or witnesses on oath, and upon due proof thereof, either by the voluntary confession of the party, or by the oath of one or more credible witness or witnesses, to give judgment or sentence; and in case the party accused shall be convicted of such offence, it shall and may be lawful for such justice to commit such offender to prison, there to remain for any time not exceeding the space of two months, unless the penalty shall be sooner paid; and if any person shall find himself aggrieved by the judgment of any such justice, he may appeal to the next court of general quarter sessions for the county or city where such offence shall have been committed, on giving immediate notice of such appeal, and finding sufficient security, to the satisfaction of such justice, for prosecuting such appeal with effect, and for abiding the determination of the court therein; and the said court are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the matter, and in case the judgment shall be affirmed, to award the person appealing to pay such costs occasioned by such appeal as shall seem meet; and one moiety of all money recovered on account of every such penalty shall be distributed, at the discretion of the justice making the conviction, to such person or persons as he shall judge to have been instrumental in detecting and prosecuting the offender.

§ XII. Framing a false Bill of Parcels—Breaking Packages, &c.

By stat. 3 *G.* 4. *c.* 55. § 37. It is enacted, that every person who for the purpose of protecting or preventing any goods, wares, merchandise, or other articles whatsoever from being seized, on suspicion of their being stolen or otherwise unlawfully obtained, or of preventing the same from being produced or made to serve as evidence of or concerning any felony or misdemeanor, shall frame or cause to be framed, or be anywise concerned in framing or causing to be framed any bill of parcels containing any false statement in regard to the name or abode of any alleged vendor, the quantity or quality of any goods, the place from whence, or the conveyance by which the same were furnished, the price agreed upon or charged for the same, or any other particular, knowing such statement to be false, or who shall fraudulently produce such bill of parcels knowing the same to have been fraudulently framed, shall be adjudged guilty of a misdemeanor, and shall suffer as herein-after mentioned; and may moreover, at the discretion of any justice in whose jurisdiction such offence shall be committed, be published and advertised as a fabricator of false bills of parcels, or as a convicted or reputed receiver of goods stolen or otherwise unlawfully obtained as the case may be.

3 G. 4. c. 55. Framing a false bill of parcels to escape detection, deemed a misdemeanor.

§ 38. And whereas, for the purpose of increasing the facility of depredation, it hath been a common practice among persons concerned in the landing and warehousing of merchandize from on board ships and vessels in the said river, wilfully to injure and promote the opening and breaking of casks, bags, and other packages, and the spilling of their contents; for remedy thereof, it is enacted, that if any person employed in the loading, landing, or warehousing of any goods, or any other person, shall wilfully or through culpable negligence or carelessness, cause or suffer, or be concerned in causing or suffering to be broken, bruised, pierced, started, cut, torn or otherwise injured, any cask, box, chest, bag, or other package, containing or being designed and prepared for containing any goods while on board of any barge, lighter, or other craft lying or being in the said river, or any dock, creek, quay, wharf, or landing place adjacent to the same, or in or in the way to or from any warehouse to or from which such package shall have been removed, shall be removing, or about to be removed, with intent that the contents of such package, or any part thereof, may be spilled or dropped from such package, every person so offending shall for every such offence be deemed and adjudged guilty of * misdemeanor, and shall suffer as herein-after mentioned.

Penalty for breaking, &c. packages, with an intent that the contents may be spilled.

* *Sic.*

§ 39. If for the purpose of preventing the seizure or discovery of any materials, furniture, stores, or merchandise belonging to or having been part of the cargo of any ship or vessel lying in the said river or the docks or creeks adjacent thereto, or of any other articles unlawfully obtained from any such ship or vessel, any such or any other article shall be wilfully let fall or thrown into the river, or in any other manner directly or purposely conveyed away or endeavoured to be conveyed away from any ship, boat, barge, lighter, craft, wharf, quay or other landing place, every

Wilfully letting fall articles into the Thames, or into a boat, &c. with fraudulent intention, how to be punished.

3 G.4. c.55. person being party, privy, or accessary to such letting fall, throwing, or conveyance, or to any previous instructions or premeditated design so to let fall, throw, or convey away any such article with any such purpose as aforesaid, shall be deemed and adjudged guilty of a misdemeanor; and every *Thames* police surveyor, or constable or other peace officer within his jurisdiction, shall apprehend and detain every such person, and forthwith convey him or her before some justice, and shall also seize and detain any boat in which such person shall be found, or out of which any such article shall be so let fall, thrown, or conveyed away; and upon the conviction of such person, such boat, with her tackle, apparel, furniture, and loading, shall be forfeited and disposed of as is hereinafter directed.

§ XIII. Penalty for Offences declared Misdemeanors, and Punishment under Stat. 2 *G.3. c.* 28.

For offences declared misdemeanors, and for which no penalty is appointed, offenders shall forfeit not exceeding *5l*, or be imprisoned.

By stat. 3 *G.4. c.55.* § 40, it is enacted, that for every offence herein before declared to be a misdemeanor, or for which no special penalty is herein before appointed, the offender shall, at the discretion of the justice before whom the conviction shall take place, either forfeit and pay any sum not exceeding five pounds, or suffer imprisonment for any time not exceeding two months, in any gaol or house of correction within the jurisdiction of such justice; and in case of the adjudication of a pecuniary penalty, and nonpayment thereof, it shall be lawful for such justice to commit the offender to any gaol or house of correction for the like term, unless such penalty shall be sooner paid; and one moiety of every such pecuniary penalty shall be paid to such receiver as aforesaid for the purposes of this act, and the other moiety thereof, under the direction of the justice by whom the same shall have been adjudged, shall either be paid and applied to the use of the informer alone, or be distributed between such persons as shall have contributed to the conviction of the offender, in such shares and proportions as such justice shall think fit; and that when any articles shall be seized by virtue of this act, and the person in whose possession the same shall have been found shall be convicted of a misdemeanor as aforesaid, it shall be lawful for the justice before whom the conviction shall take place, to cause such articles to be advertised in some public newspaper, to the end that persons having a right thereto may claim and receive the same within thirty days from the date of such advertisement, in the manner and upon the conditions directed in and by an act of the second year of his late M.'s reign, intituled *An Act to prevent the committing of thefts and frauds by persons navigating bum-boats and other boats upon the river* Thames; and if no person shall prove his property and right to the said articles within the said thirty days, the same shall be sold for the best price that can reasonably be gotten for the same; and after deducting the charges according to the said recited act, the residue of the produce thereof shall be paid to the said receiver for the purposes of this act.

Articles seized to be advertised if person convicted.

(2 G.3. c.28.)

Misdemeanors under recited act, 2 G.3.

§ 42. And whereas the punishments for misdemeanors provided in and by the said act of the second year of his late M.'s reign, have been found insufficient for the preventing of such offences;

enacts, that every person wno shall be guilty of any of the offences respectively made and declared to be misdemeanors in and by the said act, may be punished at the discretion of the justice or justices by or before whom the offender shall be convicted, either with the punishment appointed in and by the said act, or by such other punishment as is hereby appointed for and in cases of offences declared to be misdemeanors in and by this present act; and that all the powers and provisions of the said last recited act, respecting the obstruction of its execution, and the commencement and prosecution of actions against justices and their officers acting thereunder, shall extend to all things done, and to all persons acting under this act, as fully as if the same powers and provisions were herein repeated and re-enacted. 3 G.4. c.55. — c.28. to be punished at the discretion of the justice.

§ XIV. Offences, how to be tried.

By stat. 3 *G.* 4. *c.* 55. §41, it is enacted, that in every case in which complaint shall be made of any offence by this act declared to be a misdemeanor, or for which any pecuniary penalty is herein before appointed, with or without imprisonment, in addition thereto or in lieu thereof, the matter of such complaint, if the offence shall have been committed or the offender apprehended within the jurisdiction of the city of *Landon*, may be heard and determined by the lord mayor, recorder, or one of the aldermen of the said city, and not elsewhere; but if the offence shall have been committed or the offender apprehended out of the said jurisdiction, such complaint may be heard and determined, either by one of the justices appointed to the *Thames* police office as aforesaid, or by any other justice within whose jurisdiction the offence shall have been committed or the offender apprehended; and every conviction thereupon had, shall be certified, filed, and entered in such manner as is directed in and by the said act of the second year of his late M.'s reign, with respect to convictions under that act, and may also be drawn up in such form and manner, *mutatis mutandis*, as is appointed in and by the same act; and neither such conviction, nor any proceeding previous thereto, shall be removed by *certiorari* or otherwise, into any court of record, but such conviction shall be final and conclusive to all intents and purposes whatsoever. Offences how to be tried.

§ XV. Forfeited Boats.

By stat. 3 *G.* 4. *c.* 55. § 43, it is enacted, that in all cases in which it is directed by the said last recited act, that any boat with her tackle and appurtenances, which shall be forfeited, shall be burnt and destroyed, it shall be lawful for any justice before whom any person shall have been convicted of any offence, whereby any boat is or should be adjudged to be forfeited under that act, and also for any justice by whom any boat shall be adjudged to be forfeited under this act, to direct such boat, with her tackle and appurtenances, either to be burnt and destroyed, or to be restored to the owners thereof, or to be publicly sold, and the produce of such sale to be applied in like manner as other forfeitures under this act. Forfeited boats, instead of being burnt, may be restored or sold.

§ XVI. Disputes respecting Wages for Labour on the River.

3 G.4. c.55. Disputes about wages for labour done on the river, &c. (except by Trinity ballastmen) to be settled by justices, provided the sum in question does not exceed 5*l.*

By stat. 3 *G.* 4. *c.* 55. § 44. After reciting that, whereas disputes frequently arise between bargemen, lightermen, watermen, ballastmen, coal-whippers, coal-porters, sailors, lumpers, riggers, shipwrights, caulkers, and other labourers who work for hire in or upon the said river, and the docks, creeks, wharfs, quays, and places adjacent, respecting wages or money due to them for work, and the owners, masters, or commanders of vessels and their agents, and the owners, wharfingers, or occupiers of such wharfs or quays, and their agents and other persons employing such labourers; it is enacted, that all differences, complaints and disputes which shall happen and arise between any bargemen, lightermen, watermen, ballastmen (except Trinity ballastmen), coal-whippers, coal-porters, sailors, lumpers, riggers, shipwrights, caulkers, or other labourers who work for hire in or upon the said river, or the docks, creeks, wharfs, quays, or places adjacent, and the owners, masters or commanders of vessels or their agents on the said river, or the docks or creeks thereunto adjoining, or the owners, wharfingers, or occupiers of such wharfs or quays, or their agents or other employers, respecting wages or money due to such labourers for work, whether the same persons be employed for any certain time, or in any other manner, shall be heard and determined by the justices appointed to the *Thames* police office, or any one of them, or any other justice within his jurisdiction; and every such justice is hereby empowered to summon before him any such master or commander of any vessel, or any such owner thereof, or his agent, or the owner, wharfinger, or occupier of any wharf or quay, or their respective agents, or any other employer; and if any such master, commander, owner, wharfinger, occupier, agent, or employer, shall refuse or neglect to attend such summons, then every such justice is hereby empowered to issue his warrant to bring such person summoned before him, to answer such complaint, and to examine upon oath any such bargemen, lightermen, waterman, ballastman (other than any Trinity ballastman), coal-whipper, coal-porter, sailor, lumper, rigger, shipwright, caulker, or other labourer, or any other witness or witnesses touching any such complaint or dispute, and to make such order for payment of so much wages to such bargemen, lighterman, waterman, ballastman (other than any Trinity ballastman), coal-whipper, coal-porter, sailor, lumper, rigger, shipwright, caulker, or other labourer, as to such justice shall seem just and reasonable, provided that the sum ordered do not exceed five pounds, besides all reasonable costs attending the prosecution of the complaint, which costs the justice is empowered to order; and in case of refusal to pay, or non-payment of any sum so ordered, by the space of twenty-four hours next after such determination, such justice may issue forth his warrant to levy the same, by distress and sale of the goods and chattels of the person ordered to pay the same, together with the charges of such distress and sale; and if no sufficient distress shall be found, such justice shall commit the person ordered to make such payment to prison, for any time not exceeding one month, unless the sum so ordered shall be sooner paid; and every such

order shall be final and conclusive, to all intents and purposes, and shall not be removable, by *certiorari* or otherwise, into any court whatsoever. 3 G.4. c.55.

§ 45. Provides, that nothing herein contained shall extend to authorise or empower any justice, except the lord mayor, aldermen, and recorder of the city of *London*, for the time being, or some or one of them, to hear and determine any such differences, complaints, or disputes as shall or may arise for or in respect of any employment or work done within the said city of *London*, or the suburbs and liberties thereof, or on board of any ship, hoy, barge, lighter, boat, or other vessel lying or being on the north side of the river, between the tower of *London* and the western extremity of the *Temple*, adjoining *Essex-street*, in the county of *Middlesex*.

Jurisdiction for determining disputes about wages for labour done on the *Thames*, &c.

§ XVII. Places excepted from the Operation of this Act.

Stat. 3 *G.* 4. *c.* 55. § 46. Provides, that nothing in this act shall extend to deprive the lord mayor and commonalty and citizens of the city of *London*, of any right, privilege, or jurisdiction heretofore lawfully claimed, exercised, or enjoyed within the town and borough of *Southwark*, or the liberties thereof, or to prevent the said lord mayor for the time being, or such of the aldermen of the said city as have borne the office of mayoralty, or the recorder of the said city for the time being, from acting as justices of the peace within the said town and borough of *Southwark*, and the liberties thereof, in such and the like manner as they could or might have done in case this act had not been made; nor to deprive the lord mayor and commonalty and citizens of the said city of any right, privilege, immunity, or jurisdiction which they have heretofore lawfully claimed, exercised or enjoyed upon the said river, or the lord mayor of the said city for the time being as conservator of the said river; nor to prevent the said lord mayor, and the said alderman and recorder of the said city, from acting as justices of the peace upon the said river, or taking cognisance of offences committed upon or within the limits of the same, in such manner as they might or would have done in case this act had not been made.

Not to affect the rights of the city of London, &c.

§ 47. Provides and enacts, that nothing in this act shall extend to deprive the dean and chapter of the collegiate church of *Saint Peter, Westminster*, or the high steward or high bailiff of the city and liberty of *Westminster*, for the time being, or their respective lawful deputies, of any rights, privileges, or jurisdictions which they have heretofore lawfully claimed, exercised, or enjoyed within the said city and liberty, in such and the like manner as they could or might have done in case this act had not been made.

§ 48. Provides and enacts, that nothing in this act contained shall extend to prejudice or derogate from any of the rights, privileges, or authorities of the master, warden, and assistants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity, and of *St. Clement*, in the parish of *Deptford Strond*, in the county of *Kent*.

Not to affect the rights of the Trinity House, &c.

§ XVIII. Commencement and Continuance of this Act. — 3 G. 4. c. 55.

3 G. 4. c. 55 Commencement and continuance of act. Public act.

By § 49. It is enacted, this act shall commence and have effect from the expiration of the said recited act of the last session of parliament, and shall continue in force for seven years.

§ 50. This act is declared to be a public act.

Polygamy. (a)

See tit. Marriage, *ante*.

[1 J. 1. c. 11.—35 G. 3. c. 67.]

Bigamy and polygamy.

BIGAMY is, where a man has two wives successively; Polygamy, where he hath several wives at the same time; but they are commonly confounded one with the other.

(a) In the appendix to Sir Samuel Romilly's "Observations on the Criminal Law of England," published in 1813, note (M.) page 105, are the following very judicious remarks on this offence.

"The crime of bigamy (which is made felony by stat. 1 *Jac.* 1. *c.* 11., and which by stat. 35 *G.* 3. *c.* 67. is punishable with transportation for seven years or imprisonment) comprehends two species of offences, differing greatly from each other in their character and effects, and in their degree of moral guilt; and the circumstances which mark the distinctions between these different offences are clear and unequivocal. If the atrocity of a crime is to be measured by the extent of the wrong done to the person who is the victim of it, few crimes can be more atrocious than that of a married man, who by representing himself to be a bachelor, prevails on a modest woman to become his wife; he possesses himself by fraud of her person, knowing that he may at any moment dismiss her as a prostitute from his bed, and nothing can exceed the horror she must feel, whenever, the secret of his first marriage being divulged, she shall be awakened to her real situation and shall find herself despoiled of her honour, and that the children she has borne are bastards and outcasts. The real nature of this crime is that of a fraudulent and most aggravated seduction, effected under colour of law, with all the solemnities of religion, and under such circumstances that no prudence or caution could effectually guard against it. But he who before his second marriage apprises the woman that he is already a husband, does *her* no wrong. His offence is one to the state alone, and consists in nothing but the public scandal it affords. The bigamist who had concealed his first marriage from his victim, is equally guilty of this outrage on public decency, and has besides done one of the greatest possible injuries to an individual.

"It results from these considerations, that in a woman the crime of bigamy can never be so heinous as in a man, and that in a man the heinousness of the crime consists altogether in the concealment of the former marriage. Mr. Justice *Blackstone*, however, not adverting to those distinctions, tells us that bigamy "has been made felony by reason of its being so great a violation of the public economy and decency of a well-ordered state." "It is that," he says, "which never can be endured under any rational civil establishment; and in northern countries," he observes, "the very nature of the climate seems to recoil against it." 4 *Blac. Com.* 163. But he does not even glance at the injury done to the woman who suffers from the crime; and even the more philosophical author of the "Principles of Penal Law, page 105., defines polygamy only to be a gross species of adultery, aggravated by the profanation of a religious rite."

Although, as has been already observed, this is, in women, a crime of much less magnitude than in men, yet, until the stat. of 3 and 4 *W.* & *M.* (which extended the benefit of clergy to women) passed, it was punishable in female offenders with death, but in males only with burning in the hand and a year's imprisonment. See also 20 *Howell's State Trials*, p. 362.

By stat. 1 *Ja.* 1. *c.* 11. § 1. *If any person or persons within his majesty's dominions of* England *and* Wales, *being married, or which hereafter shall marry, do at any time marry any person or persons, the former husband or wife being alive, every such offence shall be felony, and the person and persons so offending shall suffer death as in cases of felony; and the party and parties so offending shall receive such and the like proceeding, trial, and execution in such county where such person or persons shall be apprehended, as if the offence had been committed in such county where such person or persons shall be taken or apprehended.* 1 J.1. c.11.

§ 2. *Provided, that this shall not extend to any person whose husband or wife shall be continually remaining beyond the seas by the space of seven years together;* Exceptions.

Or whose husband or wife shall absent him or herself the one from the other by the space of seven years together, in any parts within his majesty's dominions, the one of them not knowing the other to be living within that time.

§ 3. *Provided also, that this act shall not extend to any person or persons that are or shall be at the time of such marriage divorced by any sentence had or hereafter to be had in the ecclesiastical court;*

Or to any person where the former marriage hath been or hereafter shall be by sentence in the ecclesiastical court declared to be void and of no effect;

Nor to any person or persons for or by reason of any former marriage had or made or hereafter to be had or made within age of consent.

§ 4. *Provided also, that no attainder for this offence made felony by this act shall make or work any corruption of blood, loss of dower, or disinherison of heir or heirs.*

If any person within his majesty's dominions of England *and* Wales.] If the first marriage were beyond sea, and the latter in *England* or *Wales*, the party may be indicted here, because the latter marriage makes the offence; but if the first marriage were in *England*, and the second abroad, though in *Ireland*, the general opinion seems to be that it is not within the act; for the second marriage which alone constitutes the offence, is a fact done within another jurisdiction; and though inquirable here for some purposes like all transitory acts, is not cognisable as a crime by the rule of the common law. *Kel.* 79, 80. 1 *East's P. C.* 465. 1 *Russ.* 285.

Being married.] This extends to a marriage *de facto*, or voidable by reason of consanguinity, affinity, or such like; for it is a marriage in judgment of law until it be avoided; and, therefore, though neither marriage be *de jure*, yet they are within this statute. 3 *Inst.* 88.

Shall marry any person, the former husband or wife being alive.] *A.* married *B.* in *Holland*, and afterwards in the same country married *C.* in *B.*'s lifetime; *B.* died, and then living *C.*, *A.* married *D.* in *England*. This was holden not to be within the act; because the marriage with *C.* was simply void. But if *B.* had been living it would have been felony to have married *D.* in *England*. *Lady Madison's case, O. B.* 1648. 1 *Hale*, 693.

R. v. *William Allison, alias William Wilkinson, York Sp. Ass.* 1806. *MS. C. C. R.* The prisoner was tried before *Chambre* J.

at *York Spring* assizes, 1806, upon an indictment for bigamy in marrying *Ann Epton*, on the 23d *May*, 1804, *Jane* his former wife being then living.

Thomas Pape, to whom the prisoner was then a servant, proved that he was present at the celebration of the marriage between the prisoner and *Jane Chaplin*, at the parish church of *Ulroome*, on the 27th *February* 1798. They were married by the curate of the parish. — The prisoner quitted his service at *May-day*, and he had not known much of the parties since: but *Jane* was living on the 8th of *October* last, on which day he saw her. *Robert Wilson* proved that he was present at the prisoner's second marriage with *Ann Epton*; they were married at the parish church of *Ottringham*, by the curate of the parish on *Whit-Wednesday*, 1804; the prisoner then going by the name of *Wilkinson*; the witness was there merely from curiosity. They lived together afterwards as man and wife. The death of *Jane*, the first wife, on the 1st of *December* last, was also proved. The jury found the prisoner guilty, but judgment was respited upon a doubt whether this evidence without any proof of the registration of either marriage or of any licence or publication of banns was sufficient to support a conviction. The judges held the conviction right, and the prisoner was sentenced to be imprisoned twelve calendar months in the house of correction at *Beverley*.

In respect to the manner of proving the two marriages, the first must be duly established to be valid, according to the rites and customs of the country in which it was celebrated. 1 *East's P. C.* 469. *Per Bayley J. Smith* v. *Huson*, *Deleg. T.* 1811, citing a case reserved for the opinion of the judges K. B. *M.* 1803.

Where the first marriage, which was with a Roman Catholic woman, was by a *Romish* priest in *England*, not according to the ritual of the church of *England*, and the ceremony was performed in Latin, but the witnesses not understanding that language could not swear that the ceremony of marriage according to the church of *Rome* was read, the defendant was acquitted. (*a*) But Ld. Ch. J. *Willes*, who tried him, seemed to be of opinion that a marriage by a priest of the church of *Rome* was a good marriage if the ceremony according to that church could be proved, namely, the words of the contracting part of it. But this was before the marriage act. *Lyon's case*, *O. B. Dec.* 1738. 1 *East's P. C.* 469. See *Fielding's case*, *post*, p. 726.

How far the acknowledgment of the defendant is evidence.

How far the *acknowledgment* of the defendant upon the subject of his marriage is sufficient evidence of the fact, may admit of some doubt. In *Trueman's case* it was held, that proof of the prisoner's cohabiting with and acknowledging himself married to a former wife then living, such assertion being backed by his producing to the witness a copy of the proceeding in a *Scotch* court against him and his wife for having contracted the marriage improperly, (the marriage, however, being still good according to that law) was sufficient evidence of the first marriage; and upon such evidence, together with due proof of the second marriage, the prisoner was convicted. The point being reserved for the opinion of the judges, all of them (with the exception of *Perryn* B. and *Buller* J. who were absent) held the conviction proper.

(*a*) The second marriage was by a clergyman of the Established Church.

Two of them observed that this did not rest upon cohabitation and bare acknowledgement; for the defendant had backed his assertion by the production of the copy of the proceeding: but some of the judges thought that the acknowledgment alone would have been sufficient, and that the paper produced in evidence was only a confirmation of such acknowledgment. *Truman's case, Nottingham Spring Ass.* 1795. 1 *East's P. C.* 470.

With respect to the admission of a bare acknowledgment in cases of this nature,* Mr. *East* says (1 *P. C.* 471.) it may be difficult to say that it is not evidence to go to the jury, like the acknowledgment of any other matter *in pais* where it is made by a party to his own prejudice at the time. But it must be admitted that it may under circumstances be entitled to little or no weight; for such acknowledgments made without consideration of the consequences and palpably for other purposes at the time, are scarcely deserving of that name in the sense in which acknowledgments are received as evidence; more especially if made before the second marriage, or upon occasions, when in truth they cannot be said to be to the party's own prejudice, nor so conceived by him at the time.

Validity of first marriage impugned.

R. v. *John Hind*, otherwise *John Ashmead Hind*, *Durham Sum. Ass.* 1813. *MS. C. C. R.* The prisoner was tried before *Chambre* J. at *Durham Summer Assizes*, 1813, upon an indictment for bigamy. The first marriage was in *Yorkshire*, and took place in *April* 1812. The second was at the *parish of Houghton-le-Spring*, in the county of *Durham*, in *December* last, the first wife being still living. A doubt arose upon the validity of the first marriage under the following circumstances: The parties resided in the parish of *Marrick* in the county of *York*. The parish church of *Marrick*, at the times of publishing the banns and celebrating the marriage, was under repair, and wholly, or in a great measure unroofed, and no service was performed there. The banns were therefore published at the church of *Grinton*, the parish adjoining to *Marrick*, and the marriage also was celebrated at *Grinton*. The proofs in all other respects were full, and the prisoner was convicted and received sentence; but as the statute makes no express provision for the publication of banns and the celebration of marriages under such publication, elsewhere than in the parishes where the parties reside, (except when such residence is in extra-parochial places,) the case was submitted for the opinion of the Judges upon the question of the validity of the first marriage. See stat. 26 *G.* 2. *c.* 33. § 1. 5 & 8. On the 13th *November* 1813, eleven Judges assembled all agreed that the 10th section of this act which had not been adverted to, put an end to the doubt. Conviction right. See stats. 4 *G.* 4. *c.* 76. § 13. and 5 *G.* 4. *c.* 32. *ante*, p. 357, 358. tit. Marriage.

Second marriage void.

Every such offence shall be felony.] And such second marriage is merely void. 3 *Inst.* 88.

First wife cannot be a witness.

And the person, &c. shall be tried.] The first and true wife is not to be allowed as a witness against the husband, [nor *vice versâ*;] but it seemeth clear that the second wife may be admitted to prove the second marriage, being not so much as his wife *de facto*. 1 *Hale*, 693. 4 *Blac. Com.* 164. 1 *Phill. Ev.* 78. *See* 2 *Chitt. Crim. L.* 719. (*n.*)

In the county where he or she was apprehended.] This, accord-

Venue.

ing to the resolution in Lord *Digby's* case, may be in the place where the party is taken, which is the place where he is imprisoned. And it is only *cumulative;* for he may be indicted where the second marriage was, though he be never apprehended; and so may be outlawed. 1 *Hale*, 694. 1 *Russ.* 289, 290. *Hutt.* 131.

A person in custody on a criminal charge is liable to be tried where imprisoned.

R. v. *James Jordan*, otherwise *James Weaver*, *MS. C. C. R.* The prisoner was tried before *Lawrence* J. at *Worcester* Summer Assizes, 1802, on an indictment charging him with felony in marrying, on the 7th of *June*, 1802, one *Elizabeth Lane*, at the parish of *St. Clement*, in the *county of the city of Worcester*, *Mary Taylor*, his former wife being then living, and that he was apprehended for the felony aforesaid at the parish of *Astley* in the county of *Worcester*. The facts of both marriages were proved; and that the prisoner was apprehended in the county of *Worcester* on a charge of stealing two hammers of one *William Collins*, and that being in the house of correction on that charge, a bill of indictment was found against him for this bigamy at the quarter sessions, and on the bill being found, he was detained by an order of that court. It was objected on behalf of the prisoner, that an indictment could be preferred against him for this offence only in the county where the *second* marriage was, or in some other county where he was apprehended for that offence, whereas the defendant was apprehended in the county of the city of *Worcester*, not for this bigamy, but for a larceny. And if that were otherwise, the prisoner could not be convicted on this indictment, as it charged he was apprehended in the county for this felony, which was not proved, as his apprehension was for larceny.—The jury found the prisoner guilty. And on case reserved, the Judges, who in *H. T.* 1803, determined the conviction to be right. The prisoner was sentenced to six months' imprisonment in the house of correction.

In *Forsyth's* case at the *O. B.* in *July* Sessions, 1798, the court is reported to have held, (upon an objection taken by the prisoner's counsel,) that as the *warrant* for the prisoner's apprehension had not been produced, and as it had not been proved that the prisoner was *apprehended* in the county of *Middlesex*, they had no jurisdiction to try him. 2 *Leach*, 826.

The provisoes in stat. 1 *J.* 1. *c.* 11. contain the five following exceptions:—

First exception, where husband or wife shall be beyond the seas for seven years.

First, That the statute shall not extend "*to any person or persons whose husband or wife shall be continually beyond the seas by the space of seven years together.*"

Upon this branch the construction has been, that where either of the parties is beyond the seas for seven years, though the party in *England* have notice that the other is living, it is no felony to marry again, although the second marriage be void. 1 *Hale*, 693. 3 *Inst.* 88. 4 *Blac. Com.* 164.

Beyond the seas.] And this, although it be within the king's dominions; as in *New England* or *Ireland*. 1 *Hale*, 693.

Second exception, absence within the kingdom for seven years without knowledge.

The second exception of the stat. 1 *J.* 1. exempts any person "*whose husband or wife shall absent him or herself the one from the other by the space of seven years together, in any parts within his majesty's dominions, the one of them not knowing the other to be living within that time.*" Here the want of such knowledge is

important to excuse the second marriage. Whether the party be not bound to use reasonable diligence to inform himself of the fact; and still more, whether, if he neglect or refuse to avail himself of palpable means of acquiring such information, he will stand excused? are points which do not appear to be settled. See 1 *East's P. C.* 467. 1 *Russ.* 286. With respect to the words "*within his majesty's dominions,*" Lord *Hale* says, that they must, *in favorem vitæ*, be intended to mean within *England*, *Wales*, or *Scotland*, in order to make both clauses consistent. 1 *Hale*, 693.

Third exception.

The third exception provides, that the act shall not extend "*to any person or persons that are, or shall be at the time of such marriage, divorced by any sentence in the ecclesiastical court.*"

It has been held that this clause, in respect of the generality of the words, applies as well to a divorce *a mensâ et thorô*, as to a divorce *a vinculo matrimonii;* and though, in *Porter's case*, *Cro. Car.* 461., where the divorce was *causâ sævitiæ*, this point was much doubted, yet other authorities are positive as to its falling within the exception. *See Middleton's case at the O. B.* 14 *C.* 2. *Kel.* 27. 4 *Blac. Com.* 164. 1 *East's P. C.* 467. 1 *Russ.* 286. 1 *Hale*, 694.

A marriage contracted in England cannot be dissolved by a sentence of divorce in *Scotland*.

In the case of *William Martin Lolly*, at *Lancaster* Assizes, *September* 1812, *cor. Wood* B. a question arose, whether a decree of the commissary or consistorial court of *Scotland* would operate so as to excuse a person, who having been married in *England*, from the penalties of bigamy. On the part of the prosecution, it was proved, that the prisoner was an *Englishman*, that both the marriages were solemnized at *Liverpool*, and that the first wife was living at the time of the second marriage; the prisoner's defence was, that before the time of his second marriage, a divorce had been sued for and obtained in *Scotland* by his first wife, on the ground of adultery. The jury, under his lordship's direction, found the prisoner guilty; but the question was reserved for the opinion of the twelve judges, and was argued before them in the *Mich. Term* following. And at the *Spring* Assizes, 1813, *Thompson* B. stated the opinion of the judges to be, 1. That a marriage lawfully contracted in *England* cannot be dissolved in a different country by any authority whatever; and, 2d, That the proviso relates only to the sentences of courts in *England.* (*a*) *R.* v. *Lolly*, *MS. C. C. R.* 1 *Russ.* 287. See also *Tovey* v. *Lindsay*, 1 *Dow's Rep.* 117. 5 *Evans's Coll. Stat.* 216. *note* (4).

Fourth exception, sentence in the ecclesiastical court.

The fourth exception is, That the act shall not extend "*to any person or persons where the former marriage shall be, by sentence in the ecclesiastical court, declared to be void and of no effect.*" But it was resolved by all the judges, that a sentence of the spiritual court against a marriage in a suit of jactitation of marriage, is not conclusive evidence, so as to stop the counsel for the crown from proving the marriage; the sentence having decided on the invalidity of the marriage only collaterally, and not directly. And further, admitting such sentence to be conclusive, yet that the counsel for the crown may avoid the effect of such

(*a*) The prisoner was sentenced to be transported for seven years, and he was sent on board the *Portland* hulk at *Langstone* harbour, where he continued some time; but it is understood he received a pardon before any considerable portion of his sentence was expired.

sentence, by proving it to have been obtained by fraud or collusion. *The Duchess of Kingston's case, Dom. Proc.* 20 *Howell's St. Tri.* 355. 1 *Leach*, 146.

Fifth exception, within age. The fifth exception provides, that the act shall not extend "*to any person or persons for or by reason of any former marriage had or made within age of consent.*"

If either party be within the age of consent, which in the man is 14, and in the woman 12, the fifth exception extends to both; for the power of dissent to the former marriage must be reciprocal. And yet in a civil light a promise of marriage by an adult to one under age, will subject the adult to an action for a breach of such promise. *Holt* v. *Ward*, *T.* 5. *G.* 2. *Stra.* 850. 937. But if both are above those respective ages at the time of the first marriage, though under twenty-one, a second marriage would be felony. And though either were under the age of consent when the first marriage was contracted, if they agreed to it when both had attained such age, by which the marriage is completed; it seems that a second marriage would be within the reason and penalties of the act. 3 *Inst.* 89. 1 *Hale*, 17. 694. 1 *Haw. c.* 43. § 6. 4 *Blac. Com.* 165. 1 *East's P. C.* 468.

Provisions for regulating marriages, see tit. Marriage.

Proof of first marriage. In a prosecution for bigamy, a marriage in fact must be proved. *Morris* v. *Miller*, 1 *Bla. R.* 632. 4 *Burr.* 2057., and *Denison* J. is there said to have ruled, that though a lawful canonical marriage need not be proved, yet a marriage in fact, whether regular or not, must be shewn; but *semble* this must be understood where there is *primâ facie* evidence of a lawful marriage. 10 *East*, 287. n. (*c*.)

Before the marriage act (26 *G.* 2. *c.* 33.), a marriage in the prisoner's own lodgings, by a Romish priest in the suite of the Imperial envoy, was held good on evidence of words of present contract, spoken in *English*, so as to convict the prisoner of polygamy in a 2d marriage. *Fielding's case*, 14 *Howell's St. Tr.* 1328. 5*th vol. fol. edit.* 610. and, see *per Ld. Ellenb.* 10 *East*, 288.

Lautour v. Teesdale. *Lautour*. v. *Teesdale*, 2 *Marsh.* 243. 8 *Taunt.* 830. *S. C. E.* 1820. *British* subjects resident in a *British* settlement abroad, are governed with respect to marriage by the law which existed here before the marriage act; *viz.* the canon law. Therefore, where two *British* subjects, being protestants, were married at *Madras* by a *Portuguese* Roman Catholic priest, according to the catholic form, in the *Portuguese* language, in a private room, and the ceremony was followed by cohabitation; this was held to be a valid marriage, though without a licence from the governor, which it is the custom at *Madras* to obtain.

Rex v. Reilly. *R.* v. *Reilly*, *Lanc. Summ. Ass.* 1823. Indictment for bigamy. The first marriage was proved to have been solemnized by a clergyman in a *private house* in *Ireland*, under authority of a licence authorizing the marriage to take place at a canonical time *and place*. Evidence was given by two *Irish* clergymen, speaking to their own practice only, in the same parish, that they had solemnized marriages in houses, but that that practice had formerly been much more general than of late; and for the last five or six years the usage had been to marry in the church. They could not swear that marriages in private houses had taken place under licences, like that on which the marriage in question had been so-

lemnized.—*Bayley* J. charged the jury that he could not judicially take notice what the law in *Ireland* was, but that that law must be proved *as a fact*, as other foreign laws are. That it was incumbent on the prosecutor to shew what the *Irish* law of marriage was, so far at least as to leave the validity of the marriage in question free from reasonable doubt. That he thought the evidence of the two clergymen in this respect was deficient, and if he was to collect from the licence what the law was, he thought that shewed *that the marriage was to be solemnized in a canonical place;* which canonical place was proved to be the church. That this question as to the sufficiency of the evidence in the criminal case would decide nothing conclusively as to the validity of the marriage, but would leave that point open to the decision of the proper tribunal, *viz.* the ecclesiastical court. Prisoner acquitted. It was afterwards understood to be the opinion of the learned judge, on adverting to the case of *Lautour* v. *Teesdale, ante*, that he had laid a greater stress on the effect of the deviation from the term of the licence than he should have done; and that had that case been cited at the trial, he probably might have referred a question for the opinion of the twelve judges, "Whether the evidence before him was sufficient to establish the legality of the first marriage?" He still doubted whether it was sufficient, but thought the deviation from the licence was only a ground for ecclesiastical censure on the clergyman who solemnized the marriage. Reported in 2 *Burn's Eccles. Law, 8th edit.* by *Tyrwhitt*, 491. *n.* (7), cited by *Lord Eldon* C. in *re Saumarez, Canc.* 8 *Apr.* 1824.

A marriage in Ireland, performed by a clergyman of the church of England in a private house, held valid, although no evidence was given that any licence had been granted to the parties.

Smith v. *Maxwell, May* 8, 1824. *Guildhall*, 1 *Ry. & M.* 80. Action on a bill of exchange; Defence, coverture.—It was proved that the defendant was married at her father's house in *Ireland* in the year 1799, in the presence of the friends of both families. The ceremony was performed by a clergyman of the church of *England*, who was then, and had been for a long time previous, curate of the parish. The parish church was at that time standing, but persons of respectability were usually married at their own houses. The parties lived together for several years following as man and wife. On its being objected, that this marriage was not valid without the production of a special licence.—*Best* C. J. said, I know of no law which says, that celebration in a church is essential to the validity of a marriage performed in *Ireland*. The *English* marriage act does not apply, and I am aware of no *Irish* law which takes marriages performed in that country out of the rules which prevailed in this, before the passing of that act; and which, as it is said in the case of *Dalrymple* v. *Dalrymple*, 2 *Hagg. R.* 54. are common to the greater part of Europe. That case has placed it beyond a doubt, that a marriage so celebrated as this has been would have been held valid in this country before the existence of that statute; and when I find that this marriage was performed by a gentleman who had officiated as curate of the parish for eighteen years, I must presume it to have been correctly performed according to the laws of that country, and I shall not put the defendant to the production of a licence, or to any further proof. It is true, that in a case for bigamy tried before Mr. Justice *Bayley*, on the northern circuit, (*viz. R.* v. *Reilly, supra,*) an acquittal was directed, because the first marriage, which took place in *Ireland*, was performed in a private house;

but I have reason to know that the learned judge altered his opinion afterwards, and was satisfied of the validity of the first marriage. Nonsuit.

The law of *France* as to marriage, was proved by production of a book purporting to contain the code of *France*, and proved by oral testimony to contain the law of *France;* the book purporting to have been published at the Royal Printing Office, which was (according to the statement of the witness) authorised to print the laws of *France* by the government. *Per Abbott* C. J. *Dec.* 10, 1822. *Lacon* v. *Higgins*, 3 *Stark. R.* 178.

Indictment.

The indictment must state the two marriages, and aver that the former consort was alive at the time of the second marriage. In the Duchess of *Kingston's* case, (*ante*, p. 725.) the first count stated generally that the defendant on such a day, &c. being then married and then the wife of *A. J. H.*, with force and arms at, &c., did feloniously marry *E. P.*, &c. the said *A. J. H.* being then alive, &c. The second count stated the time and place of the first as well as the second marriage. When the trial is in the county where the party was apprehended, there is an additional averment of that fact. 1 *East's P. C.* 469.

2 (vulgo 1) Jac. 1. c. 11. Punishment. Felony.

Stat. 1 *J.* 1. *c.* 11. Enacts, "that if any person or persons within *England* and *Wales*, being married, or who hereafter shall marry, do marry any person or persons, the former husband or wife being alive; every such offence shall be felony; and the person and persons so offending shall suffer death as in cases of felony." Clergy however is not thereby taken away; but by the stat. 18 *Eliz. c.* 7. § 2. 3. the offender besides being burned in the hand may be imprisoned not exceeding one year: and by stat. 19 *G.* 3. *c.* 74. § 3. a moderate fine or whipping, in the manner therein specified, may be substituted in lieu of burning; but not to abridge the power of the court to imprison under any former act. And now by stat. 35 *G.* 3. *c.* 67. "If any person or persons within *England* and *Wales*, being married, do at any time from and after the passing of this act marry any person or persons, the former husband or wife being alive, and shall be in due manner convicted under the said act, (of *Jac.* 1.) they shall be subject to the same punishments, pains, and penalties as by the laws now in force persons are subject to who are convicted of grand or petit larceny." This by stat. 4 *G.* 1. *c.* 11. may be transportation for seven years in lieu of burning and whipping. See *Hansard's Parliamentary Debates*, Vol. xxx. p. 317.

18 El. c. 7. Clergy; punishment. 19 G. 3. c. 74. Fine or whipping. 35 G. 3. c. 67. Transportation for seven years. 4 G. 1. c. 11. 6 G. 1. c. 23.

35 G. 3. c. 67. Returning from transportation.

By stat. 35 *G.* 3. *c.* 67. § 2. "If any person ordered to be transported by this act shall be afterwards at large without *G. B.*, within some lawful cause before the expiration of the term, &c., every such person being thereof lawfully convicted shall be guilty of felony, and suffer death without benefit of clergy."

Trial.

By § 3. Such "person and persons so ordered to be transported as aforesaid, and afterwards found at large within *G. B.* may be tried for such offence either in the county where such person or persons was or were so convicted and ordered to be transported as aforesaid, or in such county where they shall be apprehended and taken (such county being within *England* or *Wales;*) and in such latter case the clerk, or other person having the custody of the records of the court by which such person or persons was or were ordered to be transported, shall certify a transcript briefly containing the tenor and effect of the record of

the indictment, verdict, and judgment against them; which certificate, being produced to the court before whom such person or persons shall stand on their trial, shall be deemed sufficient evidence of the indictment, verdict, and judgment contained in such record."

Warrant of Commitment for Polygamy.

County of ——, to wit. } To the Keeper of his Majesty's Gaol at ——, in the said County.

[*Toone's M. M.* 94. 4 *Chitt. Crim. L.* 85.]

RECEIVE *into your custody in the said gaol, and there safely keep until he shall be discharged by due course of law, the body of* A. O. *herewith sent you, and charged before me,* W. S. *Esq. one of his majesty's justices of the peace in and for the said county, on the oaths of* C. D. E. F. *and others, for that he the said* A. O. *on the* —— *day of* ——, *in the year of our Lord* 18—, *at the parish of* ——, *in the county of* ——, *did marry one* G. H. *spinster, and her the said* G. H. *then and there had for his wife; and that the said* A. O. *afterwards, to wit, on the* —— *day of* ——, *in the year aforesaid, in the parish aforesaid, feloniously did marry and take to wife one* L. S. *spinster, the said* G. H. *his former wife being then living, against the form of the statute in that case made and provided; the said* C. D. *having also made oath before me the said justice, that the said* A. O. *was apprehended and taken for the said felony in the parish of* ——, *in the said county of* ——. *Given under my hand and seal this* —— *day of* ——, *one thousand eight hundred and* ——.

Popery.

§ I. *General Observations.*

II. *Toleration of Catholics.*

[18 G. 3. c. 60.—31 G. 3. c. 32.—43 G. 3. c. 30.—53 G. 3. c. 128.]

III. *Miscellaneous Statutory Provisions against Papists and Popery.*

[7 R. 2. c. 12.—12 R. 2. c. 15.—13 R. 2. st. 2. c. 2.—7 H. 4. c. 8.—3 H. 5. st. 2. c. 4.—5 El. c. 1.—13 El. c. 2.—23 El. c. 1.—27 El. c. 2.—1 J. 1. c. 4.—3 J. 1. c. 4. c. 5.—1 W. & M. c. 18.—1 G. 1. st. 2. c. 13.—11 G. 2. c. 17.—10 G. 3. c. 6.]

§ I. General Observations.

IT is to be observed in general, that popish recusants are liable to all the forfeitures and disabilities and other inconveniences, to which other recusants are liable; and to many others, to which other recusants are not liable.

A *recusant* is any person who refuses to go to church and worship God after the manner of the church of *England*; a *popish* Recusant. Popish recusant.

Popish recusant convict. *recusant* is a papist who so refuseth; and a *popish recusant convict* is a papist legally convicted thereof.

There were several statutes made against recusants in Q. *Elizabeth's* reign, and the former part of the reign of K. *James* the first, the force of which, as to protestant dissenters, is taken away by the act of toleration; but no papist or popish recusant shall have any benefit by that act.

§ II. Toleration of Catholics.

18 G.3. c.60. By stat. 18 *G*.3. *c*. 60. the provisions of stat. 11 & 12 *W*.3. *c*. 4. against papists are repealed; provided that nothing in this same act of 18 *G*.3. shall extend to any person but such who shall within six calendar months after passing of the act, or of accruing of his title, being of the age of 21 years, or being of unsound mind, or in prison, or beyond the seas, then within six months after such disability removed, take and subscribe an oath in the words following:

Oath to be taken. I A. B. *do sincerely promise and swear that I will be faithful and bear true allegiance to his majesty king* George *the Fourth, and him will defend to the utmost of my power against all conspiracies and attempts whatever that shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, his heirs and successors all treasons and traitorous conspiracies which may be formed against him or them. And I do faithfully promise to maintain, support and defend, to the utmost of my power, the succession of the crown in his majesty's family against any person or persons whatsoever; hereby utterly renouncing and abjuring any obedience or allegiance unto the person taking upon himself the style and title of* Prince *of* Wales, *in the lifetime of his father, and who, since his death, is said to have assumed the style and title of* King *of* Great Britain, *by the name of* Charles *the third, and to any other person claiming or pretending a right to the crown of these realms. And I do swear that I do reject and detest, as an unchristian and impious position, that it is lawful to murder or destroy any person or persons whatsoever, for or under pretence of their being heretics; and also that unchristian and impious principle, that no faith is to be kept with heretics. I further declare that it is no article in my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated by the pope and council, or by any authority of the see of* Rome, *or by any authority whatsoever, may be deposed or murdered by their subjects, or any person whatsoever. And I do declare that I do not believe that the pope of* Rome, *or any other foreign prince, prelate, state, or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence directly or indirectly within this realm. And I do solemnly in the presence of God profess, testify, and declare, that I do make this declaration and every part thereof in the plain and ordinary sense of the words of this oath; without any evasion, equivocation, or mental reservation whatever, and without any dispensation already granted by the pope, or any authority of the see of* Rome, *or any person whatever; and without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof,*

although the pope or any other persons or authority whatsoever shall dispense with or annul the same, or declare that it was null or void. 18 G.3. c.60.

Which oath it shall be competent to the courts at *Westminster* or any general or quarter sessions to administer; of which a register shall be kept in like manner as for the oaths required from persons qualifying for offices. And provided also, that nothing herein shall extend to any popish bishop, priest, jesuit, or schoolmaster, who shall not have taken and subscribed the above oath before he shall have been apprehended, or any prosecution commenced against him,

By stat. 31 *G.3. c.*32. § 1. It shall be lawful for persons professing the *Roman* catholic religion, to appear in any of the courts at *Westminster*, or at the general quarter sessions for the county, city, or place where he shall reside, and there in open court, between the hours of nine in the morning and two in the afternoon, take, make, and subscribe the following declaration and oath; (viz.) 31 G.3. c.32.

I A. B. *do hereby declare, that I do profess the* Roman *catholic religion.* Declaration.

I A. B. *do sincerely promise and swear that I will be faithful and bear true allegiance to his majesty king* George *the Fourth, and him will defend to the utmost of my power against all conspiracies and attempts whatever that shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to his majesty, his heirs and successors all treasons and traitorous conspiracies which may be formed against him or them: And I do faithfully promise to maintain, support, and defend to the utmost of my power the succession of the crown; which succession, by an act intituled* An act for the further limitation of the crown and better security of the rights and liberties of the subject, *is and stands limited to the princess* Sophia, *electress and duchess dowager of* Hanover, *and the heirs of her body, being protestants, hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of these realms. And I do swear, that I do reject and detest, as an unchristian and impious position, that it is lawful to murder or destroy any person or persons whatsoever, for or under pretence of their being heretics or infidels; and also that unchristian and impious principle, that faith is not to be kept with heretics or infidels. And I do further declare that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated by the pope in council, or any authority of the see of* Rome, *or by any authority whatsoever, may be deposed or murdered by their subjects, or any person whatsoever. And I do promise that I will not hold, maintain, or abet any such opinion, or any other opinion contrary to what is expressed in this declaration. And I do declare that I do not believe that the pope of* Rome, *or any other foreign prince, prelate, state, or potentate, hath, or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm. And I do solemnly, in the presence of God,* Oath.

31 G.3. c.32. *profess, testify, and declare, that I do make this declaration and every part thereof in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatever: and without any dispensation already granted by the pope, or any authority of the see of* Rome, *or any person whatever; and without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope or any other person or authority whatsoever shall dispense with or annul the same, or declare that it was null or void.* *So help me GOD.*

Certificate thereof to be given.

Which said declaration and oath shall be subscribed by such person: And the proper officer shall make, subscribe and deliver a certificate of such declaration and oath having been duly made and taken, if demanded, for which he shall have 2*s.*; which certificate shall be competent evidence, unless falsified.

Not required to resort to church.

§ 3. And no *Roman* catholic, who shall have taken and subscribed the said oath as aforesaid, shall be convicted upon any of the acts following, (*viz.*) 1 *El. c.*2. 23 *El. c.*1. 29 *El. c.*6. 35 *El. c.*2. 1 *J.*1. *c.*4. 3 *J.*1. *c.*4. 3 *J.* 1. *c.*5. and 7. *J.* 1. *c.*6. or any other statute or law of this realm; or in any ecclesiastical court, for not resorting to church, or having servants who shall not resort to church, or other place of common prayer.

Not prosecutable for being a papist.

§ 4. And whereas by stats. 23 *El. c.*2. 27 *El. c.* 2. 35 *El. c.*2. 1 *J.*1. *c.*4. 3 *J.*1. *c.*5. 3 *C.* 1. *c.*2. 25 *C.*2. *c.*2. papists are made subject to several punishments, penalties, and disabilities, it is enacted that no person who shall take and subscribe the said oath in manner aforesaid shall be prosecuted or convicted for being a papist, or reputed papist, or for professing or being educated in the popish religion, or for hearing or saying mass, or for being a priest or deacon, or entering or belonging to any ecclesiastical order or community of the church of *Rome*, or for being present at or performing or observing any rite, ceremony, practice, or observance of the popish religion, or maintaining or assisting others therein.

Places of meeting to be certified to the sessions,

§ 5. Provided always, that no place of congregation or assembly for religious worship shall be allowed, until the place of such meeting shall be certified to the sessions of the county or place in which the same shall be held, and be there recorded; and the clerk of the peace shall give a certificate thereof, if demanded, for which he shall have 6*d.* And no minister or other person shall officiate in any such place of meeting until his name and description as a priest or minister shall have been recorded at the sessions, for which shall be paid 6*d.* and a certificate thereof shall be granted, if demanded, for which shall be paid 2*s.* And no priest or minister who shall officiate in any such meeting not so recorded as aforesaid shall be deemed to be within the benefit of this act for any purpose whatsoever.

and the minister's name to be recorded there.

Places of assembly not to be locked.

§ 6. Provided that if any such place of assembly shall have the doors locked, barred, or bolted, during the time of meeting, all persons who shall come to or be at such meeting shall receive no benefit from this act, notwithstanding his having taken such oath as aforesaid, but shall be liable to the same pains and penalties as if this act had not been made.

§ 10. And if any person shall wilfully and on purpose maliciously and contemptuously come into any congregation or assembly of religious worship permitted by this act, and disturb the same; or misuse any priest, minister, preacher, or teacher therein, he shall, on proof by two witnesses, before one justice, find two sureties of the peace to be bound by recognisance in *50l.* and in default thereof, shall be committed to prison till the next sessions, and on conviction of such offence at the sessions, shall forfeit *20l.* to the king. 31 G.3. c.32. Disturbing congregations, or misusing priests.

§ 18. 19. No person shall be summoned to take the oath required by stat. 1 *W.* & *M. sess.* 1. *c.*8. or the declaration required by stat. 25 *C.*2. *c.*2. Nor shall the 1 *W.* & *M. sess.* 1. *c.*9. for removing papists from *London* and *Westminster* extend to *Roman* catholics who shall have taken and subscribed the oath, &c. herein appointed. Not required to take certain oaths.

§ 20. No peer who shall have taken and subscribed the said oath, &c. in manner aforesaid, shall be liable to be prosecuted under 30 *C.*2. *stat.*2. § 5. Peers.

And by stat. 43 *G.*3. *c.*30. *Roman* catholics taking the oath and making the declaration by stat. 31 *G.*3. *c.*32. prescribed shall be entitled to all the benefits given by stat. 18 *G.*3. *c.*60. as fully as if they had taken the oath therein prescribed. (*a*) 43 G.3. c.30.

By stat. 53 *G.*3. *c.*128. § 1. All such of H. M.'s popish or *Roman* catholic subjects as hold, exercise, and enjoy any civil or military office or offices, or place or places of trust or profit, or other office or situation whatsoever, granted to them or any of them in *Ireland*, under the authority of 33 *G.*3. of the parliament of *Ireland*, and who shall have duly taken the oaths and declaration required by the said act, shall not, in respect of any such office, place, or situation, be liable, in *England*, *Wales*, *Berwick-upon-Tweed*, or in H. M.'s navy, or in the islands of *Jersey* or *Guernsey*, to any of the pains, &c. enacted by stat. 25 *C.*2. *c.*2. and shall also be wholly exempt from all pains, &c. whatsoever in the said several places last mentioned, for not making, taking, and subscribing the oaths of allegiance, supremacy or abjuration, or not making, taking, and subscribing the declaration required to be taken to enable any person to hold and enjoy any office or place of trust or profit, or for not receiving the sacrament of the Lord's supper according to the rights and ceremonies of the church of *England*; any thing contained in any act of parliament to the contrary notwithstanding. 53 G.3. c.128. Regulations as to the taking of commissions in the army.

§ 2. And if any of his said majesty's popish or *Roman* catholic subjects having duly taken the oaths and declaration required by this act, shall take or have taken in *Ireland* a commission in H. M.'s army, and shall afterwards take a higher commission or higher commissions in *G. B.* within the intent and meaning of the said act; or if any person having inlisted as a private in any regiment in *Ireland*, or being a non-commissioned officer in such regiment, shall afterwards take or have taken a commission in the said or any other regiment in *G. B.*, and shall have duly taken the oaths and declaration required by the said act, he shall not, in respect of

(*a*) [But the learned editor of the last edition of *Co. Litt.* is of opinion that it is advisable to take both the declaration and oath prescribed by stat. 31 *G.* 3. and the oath prescribed by stat. 18 *G.*3. Vide *Hargr. Co. Litt.* 391.a. n.346. oct. edit.]

53 G. 3. c. 128. such commission, be liable, in *England*, *Wales*, *Berwick-upon-Tweed*, or in H. M.'s navy, or in the islands of *Jersey* or *Guernsey*, to any of the pains, &c. in said 25 *C.* 2. *c.* 2. and shall also be wholly freed, &c. as in § 1.

§ III. Miscellaneous Provisions against Papists and Popery.

Maintaining the authority of the see of Rome.

By the stat. of 5 *El. c.* 1. § 2, 3, 4. 10, 11. If any person shall maintain the authority of the see of *Rome* in this realm, he shall incur a *præmunire* (for which see title Præmunire) for the first offence, and for the second shall be guilty of high treason. Prosecution to be within a year. And the justices in sessions may enquire thereof, and shall certify the same into the King's bench.

Absolving or withdrawing subjects.

And by stat. 3 *J.* 1. *c.* 4. § 22, 23. 25. If any person shall put in practice to absolve or withdraw any subjects from their allegiance, or if any person shall be willingly so absolved or withdrawn; he, his aiders, and maintainers, shall be guilty of high treason. The trial to be at the assizes, or in the K. B.

Taking a benefice from an alien.

By stat. 13 *R.* 2. *c.* 3. None shall take any benefice of an alien, or convey money to him for the farm thereof; on pain of incurring a *præmunire.*

No alien shall purchase or occupy a benefice in *England*; on pain of a *præmunire*. 7 *R.* 2. *c.* 12.

Going out of the realm to procure a benefice.

By stat. 12 *R.* 2. *c.* 15. He that shall go out of the realm, to procure a benefice, shall be out of the king's protection; and the same shall be void.

Accepting a benefice from the pope.

By stat. 13 *R.* 2. *st.* 2. *c.* 2. If any person shall accept a benefice from the pope, he shall be banished for ever, and his lands and goods forfeited.

By stat. 7 *H.* 4. *c.* 8. 3 *H.* 5. *st.* 2. *c.* 4. No provision of a benefice not vacant, made by the pope, and licensed by the king, shall be available: but persons endeavouring to exclude the incumbent thereby shall incur a *præmunire.*

Bulls or other instruments from Rome.

By stat. 13 *Eliz. c.* 2. If any person shall get or publish any bull or instrument from *Rome*, he shall be guilty of high treason. And his aiders and comforters shall incur a *præmunire*. And concealing the same shall be misprision of high treason. And the justices of the peace may enquire thereof, within a year and a day. 23 *El. c.* 1. § 8.

Papists refusing to take the oaths.

By the toleration act, (1 *W.* & *M. c.* 18. § 12.) If any person being required by a justice of the peace shall refuse to take the oaths of allegiance and supremacy, and to make and subscribe the declaration against popery of the 30 *C.* 2., he shall be committed by the said justice to prison; and at the next sessions, if he shall again refuse to make and subscribe the said declaration, he shall be deemed and suffer as a popish recusant convict.

Two justices may summons suspected persons.

And by stat. 1 *G.* 1. *st.* 2. *c.* 13. § 10, 11. Two justices may summon any person whom they shall suspect to be disaffected, by writing under their hands and seals, to appear before them at a time prefixed, to take the oaths of allegiance, supremacy, and abjuration, which summons shall be served on such person, or left at his dwelling house, or usual place of abode, with one of the fa-

mily there; and if such person shall neglect or refuse to appear, then on due proof made upon oath of serving the said summons, they shall certify the same to the next sessions, to be there recorded: And if such person shall neglect or refuse to appear and take the oaths at the said sessions, (his name being publicly read at the first meeting of the said sessions) he shall be taken and adjudged a popish recusant convict. And the same shall be from thence certified by the clerk of the peace into the chancery or K. B., to be there recorded.

By stat 3 *J*. 1. c. 4. § 22, 23. 25. If any person shall put in practice to reconcile any subjects to popery, or if any person shall be willingly so reconciled; he, his aiders, and maintainers, shall be guilty of high treason. The trial to be at the assizes, or in the K. B.

By stat. 27 *Eliz.* c. 2. § 2, 3. 10. No jesuit or popish priest shall come into or be in the realm, on pain of high treason; unless he conform. **Jesuits and papists being in the realm.**

§ 4. And if any person shall knowingly receive or relieve any such, he shall be guilty of felony without benefit of clergy. **Receiving or relieving them.**

By stat. 3 *J.* c. 5. § 1. And the person who shall first discover to any justice of the peace any person who shall entertain or relieve any jesuits, seminary or popish priest, within three days after the offence, so that by reason of such discovery any offender shall be taken and convicted; such person shall not only be freed from any penalty for such offence, if himself be an offender, therein, but shall also have the third part of the forfeitures if they do not exceed 150*l.* and if they do exceed 150*l.*, then he shall have 50*l.* **Discovering them.**

The provision that papists and reputed papists, being of 18 years of age, who shall not have taken the oaths of allegiance and supremacy, should pay double land tax, being in the annual land tax acts, could not be repealed by any prospective act of the nature of stat. 31 *G.* 3. *c.* 32.; but after that act passed, the object was attained by omitting this clause in the annual land tax acts passed previous to stat. 38 *G.* 3. *c.* 60., which made the tax perpetual, subject to redemption, but contains no such provision. See on this subject *Co. Litt.* 391 a. note 346 by *Butler.*, *sub. fin.* Div. III. **Paying double land tax.**

By stat. 10 *G.* 3. *c.* 6. § 113. Estates doubly taxed, coming to protestants, are to be discharged.

By stat. 1 *J.* 1. *c.* 4. § 2. A recusant conforming shall be discharged of the penalties which he might otherwise sustain in respect of his recusancy. **Papists conforming, discharged from penalties, &c.**

And by stat. 11 *G.* 2. *c.* 17. § 1. 2. 3. 4. Papists conforming to the protestant religion, and taking the oaths, and subscribing the declaration of the 30 *C.* 2. in the chancery, king's bench, or quarter sessions (to be there recorded), shall have their estates freed of the disabilities incurred before such conforming.

Note, the oaths of allegiance and supremacy above mentioned, and the declaration against popery of stat. 30 *C.* 2. are inserted at length in the title Oaths, *ante*.

Posse Comitatus. See Arrest, Vol. I.

Post-Office.

§ I. *Post-office.*

[9 Ann. c. 10. — 6 G. 1. c. 21. — 4 G. 2. c. 33. — 26 G. 2. c. 13. — 5 G. 3. c. 25. — 7 G. 3. c. 50. — 24 G. 3. sess. 2. c. 37. — 34 G. 3. c. 17. — 35 G. 3. c. 53. — 37 G. 3. c. 67. — 39 G. 3. c. 76. — 41 G. 3. (U. K.) c. 7. — 42 G. 3. c. 81. — 45 G. 3. c. 11. — 46 G. 3. c. 73. c. 92. — 48 G. 3. c. 116. — 52 G. 3. c. 88. c. 143. — 54 G. 3. c. 169. — 56 G. 3. c. 153. — 59 G. 3. c. 39. c. 111. — 3 G. 4. c. 105. — 4 G. 4. c. 81. — 5 G. 4. c. 20.]

II. *Exemption from Postage and Franking by Members of Parliament, &c.*

[4 G. 3. c. 24. — 24 G. 3. sess. 2. c. 37. — 35 G. 3. c. 53. — 42 G. 3. c. 63. — 43 G. 3. c. 119. — 44 G. 3. c. 84. — 46 G. 3. c. 61. c. 142. — 48 G. 3. c. 90. — 50 G. 3. c. 66. — 53 G. 3. c. 13. — 54 G. 3. c. 169. — 5 G. 4. c. 20.]

III. *Duties upon Horses travelling post, and letting the said duties to farm.*

[4 G. 4. c. 62.]

§ I. Post-office: —*and herein,*

1. *General Regulations.*
2. *Offences relative to the Post-office by its Servants and others.*
3. *Postage of Inland Letters.*
4. *Postage of Foreign Letters.*
5. *Packet Postage.*
6. *Postage relating to Soldiers or Seamen.*

1. General Regulations.

9 A. c. 10. Oath of person employed by post-office.

BY stat. 9 *Ann.* c. 10. § 41. No person shall be capable of exercising any employment relating to the post-office, or any branch thereof, or be any way concerned in receiving, sorting or delivering of letters, before he shall have taken the following oath, before a justice of the peace where he resides.

I A. B. *do swear, that I will not wittingly, willingly, or knowingly open, detain, or delay, or cause, procure, permit, or suffer to be opened, detained, or delayed, any letter or letters, packet or packets, which shall come into my hands, power or custody, by reason of my employment in or relating to the post-office; except by the consent of the person or persons to whom the same is or shall be directed, or by an express warrant in writing under the hand of one of the*

principal secretaries of state for that purpose; or except in such cases where the party or parties to whom such letter or letters, packet or packets, shall be directed, or who is or are chargeable with the payment of the port or ports thereof; shall refuse or neglect to pay the same, and except such letters or packets as shall be returned for want of true directions, or when the party or parties to whom the same is or shall be directed cannot be found: and that I will not in any way embezzle any such letter or letters, packet or packets, as aforesaid. 9 Ann. c. 10.

And by § 40. No person shall wittingly, willingly, or knowingly open, detain or delay, or cause, procure, or suffer any letter or packet after delivery into the post-office, or into the hands of any person employed for the receiving or carrying post letters, and before delivery to the persons to whom directed, or for their use; except by express warrant in writing under the hand of one of the principal secretaries of state: or except where the party to whom directed, or who is chargeable with the payment of the port, shall refuse to pay the same; and every person so offending or who shall embezzle any such letter or packet, shall forfeit 20*l.* to be recovered by action, &c. at *Westminster*, together with costs, and besides such penalty, such offender shall be incapable of having, using, exercising, or enjoying any office, trust or employment in or relating to the post-office, or any branch thereof. No letter to be opened or delayed. Exception.

In the case of *Martin* v. *Ford*, 5 *T. R.* 101. it was determined that the penalty of 20*l.* inflicted by stat. 9 *Ann. c.* 10. § 40. on persons who willingly or knowingly open, detain, or delay any letter after the same hath been delivered at the post-office, or into the hands of any person employed for the receiving or carrying post letters, extends only to persons *in the employment* of the post-office, and not to a person, nominated jointly by the inhabitants of a village near a post town, and the postmaster of that town to receive and deliver the letters to those inhabitants.

It is now settled, that if the persons to whom letters are addressed, *reside within the established limits of the post town*, the post-masters are obliged to deliver such letters at their places of abode, and at the rate of postage *only* as established by act of parliament. *Stock* v. *Harris, deputy postmaster at Gloucester, E.* 11 *G.* 3. 5 *Burr.* 2709. *Smith* v. *Plowditch, M.* 15 *G.* 3. 1 *Cowp.* 182. and *vide per Aston*, J. 1 *Cowp.* 189. An action on the case for damages, lies against a deputy postmaster for non-delivery of letters *gratis* in a country post-town. *Rowning* v. *Goodchild*, 3 *Wils.* 443. 2 *Blac. Rep.* 906. Postmasters are not to charge for delivering letters within established limits of post-town.

By stat. 41 *G.* 3. (U. K.) *c.* 7. § 5. The postmaster-general may undertake at the expense of the post-office the conveyance and delivery of letters directed to persons abiding in towns and places (not being post-towns) from the respective post-towns to which such letters shall be carried by the post in the usual manner, and also the collection of letters in and from such towns, villages, and places to be sent by the post, and may take such sums of money for such extra service as may be agreed upon between him and the inhabitants of such place. 41 G. 3. (U.K.) c. 7. Letters to and from places not being post-towns.

§ 6. Provided, that nothing herein shall prevent the inhabitants of any such towns and places from carrying or re-carrying, or employing servants or other persons to carry letters to or from the

post-town in like manner as they have been heretofore accustomed and are by law authorised to do.

46 G. 3. c. 92. And by stat. 46 *G.* 3. *c.* 92. § 2. The postmaster-general is authorised to do the same where the towns from whence the letters are to be conveyed are not post-towns; and § 3 contains the same proviso as § 5. of 41 *G.* 3. *c.* 7.

9 Ann. c. 10. Conveying letters otherwise than by post. By stat. 9 *Ann. c.* 10, § 17. No person shall receive, take up, order, dispatch, convey, carry, recarry, or deliver any letter or packet of letters, or make any collection of letters, or set up or employ any conveyance whatsoever for such receiving, &c. &c., or by means whereof any letter or packet of letters shall be received, &c. &c., on pain of 5*l.* for every several offence, and also 100*l.* per week.

§ 32. Saves the privileges of the two universities.

42 G. 3. c. 81. Persons sending letters otherwise than by the post, to forfeit 5*l.* And by stat. 42 *G.* 3. *c.* 81. § 5. No person shall send or tender, or deliver to be sent otherwise than by the post, or by the authority of the postmaster-general, or his deputy or deputies, or to the nearest and most convenient post-town, to be from thence forwarded by the post, any letter or packet of letters, on pain of 5*l.* for every offence, with full costs to the informer, in any court of record at *Westminster;* one moiety thereof to the king, the other moiety to the informer. See stat. 5 *G.* 4. *c.* 20. § 7. *infra.*

Exceptions. § 6. Provided, that nothing herein shall extend to any letter concerning goods sent by any common carrier, and to be delivered with such goods without profit or advantage for receiving or delivering the same; nor any letter of merchants, owners of ships, or merchant vessels, nor any the cargo therein sent on board such vessels to be delivered by the masters thereof, or by any other employed by them for the carriage thereof without hire or reward for the same; nor any commission or return thereof; affidavits, writs, process, or proceedings, or return thereof, out of any court; nor any letter sent by any private friend in their way of journey, or by any messenger sent on purpose, concerning the private affairs of any person. See stat, 5 *G.* 4. *c.* 20. § 8. p. 739.

It has recently been decided, that a letter sent in a parcel from one stamp distributor to another, containing amongst other things stamps; is to be presumed to relate to them so as to bring it within the exception respecting letters accompanying goods in the stat. 42 *G.* 3. *c.* 81. § 6.; at least a carrier seeking to evade his liability to answer for the loss of it, under the pretence of its having been an illegal act, must give some *primâ facie* evidence to the contrary to lay the foundation for his objection. *Bennett* v. *Clough*, 1 *B.* & *A.* 461.

9 Ann. c. 10. By stat. 9 *Ann. c.* 10. § 19. Penalties under this act to be sued for in any court of record; one moiety to the king, the other to the informer with full costs.

Postage recoverable as small tithes. § 30. All sums not exceeding 5*l.* due from any person for letters delivered, shall be recovered before justices of the peace as small tithes are. Such debt to be preferable to any debt to a private person.

5 G. 4. c. 20. And now by stat. 5 *G.* 4. *c.* 20. § 7. reciting, "Whereas notwithstanding the provisions in that behalf made by stat. 9 *Ann. c.* 10. and 42 *G.* 3. *c.* 81., the practice of sending and conveying by stage coaches, carts, waggons, ships, vessels, boats, barges, and other conveyances, letters and packets which, by virtue of the laws

relating to the post office, ought to be sent by the post, prevails to a considerable extent, to the great prejudice and diminution of H. M.'s revenue; it is enacted, "That from and after the passing of this act, *viz.* 12th *April,* 1824, no person or persons whatsoever, or body politic or corporate, in any part of the *U. K.* of *G. B.* or *Ireland,* or other H. M.'s dominions, where any post is or shall be established under the management of H. M.'s postmaster-general, shall receive, take up, order, dispatch, convey, carry, re-carry, or deliver, or shall send, or cause to be sent or conveyed, or tender or deliver in order to be sent or coneyed otherwise than by the post, or by and with the authority and consent of H. M.'s postmaster-general for the time being, or the deputy or deputies of such postmaster-general, or to the nearest or most convenient post-town, to be from thence forwarded by the post, any letter or letters, on pain of forfeiting for each and every letter, whether such letter shall be received, taken up, ordered, dispatched, conveyed, carried, re-carried, or delivered, or sent, or caused to be sent or conveyed, or tendered or delivered in order to be sent or conveyed, separately, or by itself, or together with any other letter or letters, or other matter or thing whatsoever, the sum of *5l.,* one moiety whereof to the use of H. M., his heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same, to be sued for and recovered, with full costs of suit, by any person who shall and will inform and sue for the same, in any of H. M.'s courts of record at *Westminster,* for offences committed within that part of the U. K. of *G. B.* and *Ireland* called *England,* and in any of H. M.'s courts of record in *Dublin* for offences committed in *Ireland,* and before the sheriff or stewart court of the shire or stewartry within which the party offending shall reside, or the offence shall be committed, for offences committed in *Scotland.*

5 G.4. c. 20.

Letters not to be conveyed in any other way than by the post, on penalty of *5l.* for each letter.

§ 8. Provides, That this act shall not extend to subject any person or body corporate to any such penalty or forfeiture as aforesaid, for receiving, taking up, ordering, dispatching, conveying, carrying, re-carrying, or delivering or sending, or causing to be sent or conveyed, or for tendering or delivering, or sending, or causing to be sent or conveyed, or for tendering or delivering in order to be sent or conveyed, any letter or letters which shall respectively concern goods sent by any common known carrier of goods, and shall be sent with and for the purpose of being delivered with the goods that such letter or letters do concern, without hire or reward, profit or advantage, for the receiving or delivering the same; nor any letter or letters of merchants, owners of any ships, barques, or vessels of merchandize, or any the cargo or lading therein, sent on board the same ships, barques, or vessels of merchandize, to be delivered by the masters of the same ships, barques, or vessels of merchandize, or by any other person employed by them for the carriage of such letters, according to their respective directions, without paying or receiving any hire or reward, advantage or profit for the same in anywise; nor any commission or return thereof, affidavits, writs, process, or proceedings, or return thereof, issuing out of any court; nor any letter sent by any private friend in his or her way of journey or travel, so as such letter shall be delivered by such friend to the party to whom such letter shall be directed; nor any letter or letters to be sent by any mes-

Act not to extend to letters to be delivered with goods sent by common carriers or by vessels; nor to proceedings issuing out of courts; nor to letters sent by private friends, &c.

5 G.4. c.20. senger on purpose for or concerning the private affairs of any person.

Limitation of actions. By § 9. If any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the same shall be commenced within 12 months after the fact committed, and not afterwards; and the defendant or defendants in

General issue. such action shall and may plead the general issue, and give this act and the special matter in evidence, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to be done, or that such action or suit shall be commenced after the time before limited for bringing the same, that then the jury shall find for the defendant or defendants; and upon a verdict for the defendant, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his, her, or their action or suit after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or

Treble costs. defendants shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in any other cases by law.

9 Ann. c. 10. Postmaster not to meddle in elections. By stat. 9 *Ann. c.* 10. § 44. No postmaster shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of any person to serve in parliament, on pain of 100*l.*; half to the informer, and half to the poor, and likewise of being incapacitated.

59 G. 3. c. 39. By stat. 59 *G.* 3. *c.* 39. § 1. The receivers-general of the revenues of customs, excise, stamps, and postage in *England*, shall pay into the receipt of the exchequer, on such days in every week as the commissioners of the treasury shall direct, all monies arising in *Great Britain*, by the customs, excise, stamps, and postage, received by the said receivers-general, and afterwards paid by them into the bank of *England*.

(2.) Offences relative to the Post-Office by Servants and others.

5 G. 3. c. 25. Post-boy loitering upon the road. By stat. 5 *G.* 3. *c.* 25. § 20. If any postboy shall quit the mail before his arrival at the next stage; or shall suffer any other person (except the person employed to guard the mail) to ride on the horse or carriage; or shall loiter on the road so as to retard the arrival of the mail; or shall not in all possible cases convey the mail after the rate of six miles an hour at least: he shall, on conviction by confession, or oath of one witness before one justice, be sent to the house of correction, to be there kept to hard labour, not exceeding one month, nor less than fourteen days.

Unlawfully collecting letters. And by § 21. if any post-boy shall by himself or in combination with others unlawfully collect any letters, or convey or cause them to be unlawfully conveyed, he shall, on conviction by confession or oath of one witness before one justice, forfeit for every letter or packet so collected, conveyed or delivered, 10*s.* to the informer: if not forthwith paid on conviction, to be committed to the house of correction to hard labour, not exceeding two months nor less than one.

Embezzling money for let- § 19. If any person appointed, authorised and intrusted to take in letters or packets and receive the postage thereof, shall em-

bezzle or apply to his own use any money received by him with such letters, &c. for the postage thereof; or shall burn or otherwise destroy any letter or packet by him so taken in or received; or who, by virtue of his office, shall advance the rates upon letters or packets sent by the post, and not duly account for the money received by him for such advanced postage; he shall be deemed guilty of felony.

5 G. 3. c. 25.

ters post paid, or destroying the letters.

And by stat. 7 *G.* 3. *c.* 50. § 3. If any person employed in any business of the post-office, who shall take any letter or packet to be forwarded by the post, and receive any money therewith for the postage, shall burn or destroy any such letter or packet; or shall advance the rate of postage upon any letter or packet sent by the post, and not duly account for the money by him received for such advanced postage; he shall be deemed guilty of felony.

7 G. 3. c. 50.

By § 1. (which re-enacts more at large the provisions of stat. 5 *G.* 3. *c.* 25. § 17.) it is enacted, that if any deputy, clerk, agent, letter-carrier, post-boy, or rider, or any other officer or person whatsoever, employed in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the post-office, shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters which such person might be entrusted with, or which shall have come to his hand or possession, containing any bank note, bank post bill, bill of exchange, exchequer bill, *South Sea*, or *East India* bond, dividend, warrant of the bank, *South Sea*, *East India*, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman's ticket, state-lottery ticket, or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, *American* provincial bill of credit, goldsmiths' or banker's letter of credit, or note for or relating to the payment of money; or other bond or warrant, draught, bill or promissory note whatsoever for the payment of money; or shall steal, or take the same out of any letter or packet that shall come to his hands or possession, such offender shall be guilty of felony without benefit of clergy.

Secreting, embezzling, or destroying letters containing certain securities or instruments by one employed by the post-office, felony without clergy.

Stealing, or taking the same out of any letter or packet, felony without clergy.

Shaw was indicted on stat. 7 *G.* 3. There were four counts in the indictment. 1st, That being a clerk employed in sorting and charging letters in the post-office, the prisoner feloniously secreted, embezzled, and destroyed a letter containing a bank note for 20*l.* 2dly, That being a person employed in the business relating to the general post-office, he secreted, &c. 3dly, That being a clerk employed in sorting and charging letters in the post-office, he feloniously stole and took out of a letter a bank note for 20*l.* 4thly, That being a person employed in the business relating to the general post-office, he feloniously stole, &c. It appeared in evidence that the prisoner was only a *sorter*, and not a *charger* of letters; whereupon the Recorder, who tried him, directed the jury (the proof of the fact being very plain) to convict him, which they did, on the second and fourth counts only. It was then moved in arrest of judgment that, as he had been acquitted on the counts which charged him as a sorter and charger, and did not appear to be a person employed by the post-office in any other business but that of *sorting*, which is one of the employments particularly spe-

Employed in sorting, &c.

7 G. 3. c. 50.

Shaw's Case.

cified in stat. 7 *G*.3. which says, that "if any person employed in receiving, sorting, charging, &c. or in any *other* business relating to the post-office, shall, &c. he could not be convicted on the third and fourth counts. This, being adjourned to *Serjeants-inn*, was argued before eleven of the judges (*abs. Blackstone* J.) who unanimously agreed that judgment should be arrested, but inclined to think, that the jury might have convicted the prisoner on the first and third counts, by a special finding that he was a sorter only. *Shaw's Case, O. B. May* 1771. *Blac. Rep.* 789. 2 *East's P. C.* 580.

Containing any bank note, &c.

Benjamin Willoughby was indicted on stat. 7 *G*.3. *c*. 50. for that he, being a clerk employed in the post-office at *Birmingham*, in stamping and charging letters, stole and took out of a letter there, *a certain warrant for the payment of money*, [setting it forth, by which it appeared to be a *Birmingham* post-bill, or bill of exchange payable in *London*.] The fact of stealing having been proved, it was objected that this was not "a warrant for the payment of money" within the meaning of the act, but a post-bill, or bill of exchange. The prisoner was found guilty, but judgment was respited to take the opinion of the judges. Though at first there was a difference of opinion among the judges, at length they all agreed that it was properly stated in the indictment; for though it was a bill of exchange, it was also a warrant for the payment of money; it was a voucher to the bankers or drawers, if genuine, for the payment, and it might also have been laid to be a draught. And they said it could not be distinguished from the case of *Rex* v. *Shepherd, Mich.* 1781, where in forgery the indictment was in the same form, and holden good. *Willoughby's Case, Warwick Lent Ass.* 1783. 2 *East's P. C.* 581.

Money in a letter.

Stealing *money* out of letters is not within these acts. *Timothy Skutt*, who was a sorter of letters, &c. stole two letters, each containing 5*s*. 3*d*. in gold coin; and being indicted on these statutes, and the fact being proved, it was objected that as the letters contained money, and not any security relating to the payment of money mentioned in the acts, the case did not fall within them; and the Court being of that opinion, he was acquitted on that indictment; but was again indicted and convicted of grand larceny for stealing the money, and was transported. *Skutt's Case, O. B.* 1774. 2 *East's P. C.* 581.

Parts of a note.

In *Moore*'s case, 2 *East's P. C.* 581. it was holden upon a conference by all the judges (except *Buller* J. who was absent, and doubted, that a letter carrier secreting half a bank-note in one letter on one day, and the other half in another letter on another day, is a secreting within stat. 7 *G*.3. *c*. 50.

42 G. 3. c. 81.

Since this decision another act has passed, 42 *G*. 3. *c*. 81., which (§ 1.) after reciting stat. 7 *G*. 3. *c*. 50. § 1., and the expediency of extending its provisions so as to protect the conveyance by the post *of all and every part or parts of such securities* or instruments, enacts, *That if any deputy, clerk, agent, &c. &c.* (as in stat. 7 *G*. 3. *c*. 50. § 1. *ante*, p. 741., *in the post-office shall secrete, embezzle, or destroy any letter or packet, bag or mail of letters with which he is entrusted, or which may come into his possession, containing any part or parts of any such security or instrument as in the said act are mentioned, or shall steal or take out of any letter or packet that shall come to his possession any part or parts of any such security*

or instrument, every such offender shall be guilty of felony without benefit of clergy. 42 G. 3. c. 81.

And by § 2. *if any person whatsoever, whether employed in any business relating to the post-office or not, shall counsel, command, hire, persuade, procure, aid, or abet any such deputy, &c. or other officer employed, &c. in the post-office to commit any offence in the said recited act, or in this act before mentioned; or shall with a fraudulent intention buy or receive the whole or any part of such security, &c. which he shall know to have been contained in any such letter, &c. so by any such deputy, &c. secreted or embezzled, or stolen or taken out of any letter, &c. that shall come to his possession, or which he at the time of buying or receiving shall know to have been contained in and stolen or unlawfully taken out of any letter, &c. stolen and taken by any person whatsoever from or out of any mail, bag, &c. or from or out of any post-office, or house or place, for the receipt or delivery of letters. &c.; each and every person so offending shall be deemed guilty of felony without benefit of clergy; and may be tried and convicted as well before as after the trial or conviction of the principal felon, and whether the principal felon shall have been apprehended or shall be answerable to justice or not.*

Persons procuring, &c. to commit offences, or fraudulently receiving such securities or parts thereof, guilty of felony without clergy, and may be tried before or after the principal.

By stat. 7 *G.* 3. *c.* 50. § 2. *If any person or persons shall rob any mail or mails, in which letters are sent or conveyed by the post, of any letter or letters, packet or packets, bag, or mail of letters; or shall steal and take from or out of any such mail or mails, or from or out of any bag or bags of letters sent or conveyed by the post, or from or out of any post-office or house or place for the receipt or delivery of letters or packets sent or to be sent by the post, any letter or letters, packet or packets; although such robbery, stealing or taking shall not appear or be proved to be a taking from the person, or upon the king's highway, or to be a robbery committed in any dwelling-house, or any coach-office, stable, barn, or any out-house belonging to a dwelling-house; and although it should not appear that any person or persons were put in fear by such robbery, stealing, or taking; yet such offender or offenders being thereof convicted as aforesaid, shall be deemed guilty of felony, without benefit of clergy.*

7 G. 3. c. 50. Robbing the mail, or stealing letters.

This section does not extend to the servants of the post-office; and therefore a conviction of one of them for stealing out of the post-office a letter sent to be delivered by the post, was holden to be wrong. The opinion of the judges in this case was founded on a comparison of the second section of the act with the first and third sections, which were expressly intended to guard against the misconduct of the servants of the post-office. *Pooley's case, O. B.* 1801. 1 *East's P. C. Add.* xvii. *Sed vide Brown's case, post,* p. 745.

Noah Pearce, intending to steal the mail bags, went one night about the usual time to the post-office at *High Wycombe*, and pretending to be the mail-guard, obtained from the person at the office the bags of letters, which were let down to him from out of the window of the post-office by a string, from whence he took them, and immediately went away. Being indicted on this act, and found guilty; all the judges were of opinion in *Hilary* Term following, that the conviction was proper on a count in the indictment for stealing the letters out of the post-office. His

7 G.3. c.50.

artifice in obtaining the delivery of them in the bag out of the house was the same as if he had actually taken them out himself. *Noah Pearce's case, Buckingham Sum. Ass.* 1794. 2 *East's P. C.* 603.

Letter carrier taking letters from office, intending to deliver them to the owners but to embezzle the postage.

A letter-carrier, taking letters out of the office, intending to deliver them to the owners, but to embezzle the postage, cannot be indicted for stealing such letters under this act. *James Howatt* was indicted on the second section of this act; 1st, for stealing out of the *London* bag, sent by the general post-office from *London* to *Manchester* divers letters specified; 2dly, 3dly, and 4thly, for stealing the like letters out of the post-office in *Manchester*, and out of a certain house for the receipt and delivery of letters sent by the post, and out of a certain place for the same. It appeared to be the duty of the clerks in the office to count the letters and deliver them out to the letter carriers, of whom the prisoner was one. He contrived to obtain possession of some of the letters before they were so counted out to him, and was detected with them in his pocket in the letter-carrier's room, which is under the same roof as the office, separated from it only by some steps. For some time previous there had been a great deficiency in the receipt of the postage, though there was no complaint of the miscarriage of any letters; and from circumstances it appeared, and so the jury found when they convicted the prisoner, that he intended to have delivered the letters, and only to have embezzled the postage. But in the *Mich.* Term following all the judges (*abs. Hotham* B.) agreed that this was not a stealing within the act. *Howatt's case, Lancaster Sum. Ass.* 1795. *cor. Rooke* J. 2 *East's P. C.* 601.

Trial, where. On an indictment for robbing the mail, the robbery must be proved to have been committed in the county laid in the indictment. But now see stats. 42 G. 3. c. 81. § 3. *infra*, and 59 G. 3. c. 96. Vol. III. tit. Indictment, p. 57, 58.

Thomas Thomas was indicted on stats. 5 *G.* 3. *c.* 25. § 18., and 7 *G.* 3. *c.* 50. § 2. First, for robbing the mail in which letters were sent by the general post from *Bristol* to *London* of one letter, &c.; and secondly, for stealing and taking from out of a certain bag of letters, called the *Bristol* bag, for *London*, &c. one letter, &c. Both these offences were charged to have been committed in *Middlesex*, and the trial was had at the *Old Bailey*. The prisoner went on the outside of the mail from *Bristol* to *London*; part of the way on the coach-box, and part (through the counties of *Wilts* and *Berks*) on the guard's seat. There was no doubt of the fact of the prisoner's having taken the letters in question out of the mail during some part of the journey, and most probably while he was in the guard's seat. In answer to the objection on behalf of the prisoner, that there was no evidence to prove the offence in *Middlesex*, it was answered that the offence was not complete until the prisoner had quitted the coach, which was in *Middlesex*; or at any rate, that, having possession of the letters there, it was a new taking and offence in that county. The jury found the prisoner guilty, adding that the letters were not taken out of the bag in *Middlesex*, but in one of the other counties. Upon a reference to the judges in *Hilary* Term, 1795, they held the conviction wrong, the offence not having been proved where it was laid. *Thomas's case, O. B. Dec.* 1794. 2 *East's P. C.* 605.

42 G. 3. c.81.

But now this difficulty is removed by stat. 42 *G.* 3. *c.* 81. § 3. which, after reciting stat. 7 *G.* 3. *c.* 50. § 1. enacts, *that the offences therein mentioned may be laid and tried* (*if committed in* England), *either in the county where the offence is committed, or*

wherein the offender is apprehended; if in Scotland, *either in the justiciary court of* Edinburgh, *or in the court of the circuit within which the felony is committed, or the offender apprehended.* 42 G. 3. c. 81.

By stat. 52 *G.* 3. *c.* 143. § 2. If any deputy, clerk, agent, letter-carrier, post-boy, or rider, or any other officer or person whatsoever employed by or under the post-office of *G. B.* in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the said office, shall, after the passing of this act, secrete, embezzle, or destroy any letter or packet, or bag or mail of letters with which he or she shall have been entrusted in consequence of such employment, or which shall in any other manner have come to his or her hands or possession, whilst so employed, containing the whole or any part or parts of any bank-note, bank post bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant, either of the Bank, *South Sea*, *East India*, or any other company, society or corporation, navy or victualling or transport bill, ordnance debenture, seamen's ticket, state lottery ticket or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, *American* provincial bill of credit, goldsmith's or banker's letter of credit, or note for or relating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever for the payment of money; or shall steal and take out of any letter or packet with which he or she shall have been so entrusted, or which shall have so come to his or her hands or possession, the whole or any part or parts of any such bank note, bank post bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant, either of the Bank, *South Sea*, *East India*, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman's ticket, state lottery ticket or certificate, bank receipt for payment of any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, *American* provincial bill of credit, goldsmith's or banker's letter of credit or note for or relating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever for the payment of money; every person so offending, being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

52 G. 3. c. 143. Offences of persons employed by the post-office, how to be punished.

Thomas Cosham Brown was tried before *Dallas* J. and *Wood* B. at *O. B. April Sess.* 1817, on an indictment charging, that he being a person employed by and under the post-office, in certain business relating to the said office, that is to say, in sorting letters and packets brought to the general post-office in *London* (*to wit*), at *Saint Mary Woolnoth* on the 21st *February*, a certain letter then lately before sent by the post from the *Town of Kingston-upon Hull* to the said general post-office, directed to Sir *James Shaw*, and containing therein one bill of exchange for payment of 195*l.*, (and several other bills of exchange set out in the indictment,) came to his hands and possession while he was so employed as

Brown's case.

aforesaid. And that he being such person employed feloniously did secrete the said letter containing the said bills of exchange, the property of *Robert Copeland Plase*, *Robert Harrison*, *James Kiere Watson*, *Henry Plase*, and *Thomas Bentley Locke*, against the statute, &c. 2*d* count charged him with stealing the bills out of a letter. 3*d* & 4*th* counts, for secreting a packet containing like bills, and for stealing like bills thereout. There were four other counts, the same as the first four, only stating the bills to be the property of Sir *Charles Price* baronet, Sir *William Kay* baronet, *Charles Price*, and *Israel Thomas Coleman*. A 9*th* count charged him with stealing out of a certain post-office in *London*, a certain other letter then lately sent by the post from the town of *Kingston-upon-Hull* to *London*, directed for and to be delivered to a certain person at *London*, (*to wit*,) the said Sir *James Shaw*, and one other letter, against the statute, &c. And a 10*th* count, the same as the 9*th*, only stating it to be a packet instead of a letter. The substance of the evidence in support of the 1st count was, that the prisoner was employed in the post-office to deliver letters, but not to sort them, the two employments being distinct, and the prisoner having assisted in sorting the letters from which the letter in question was taken, being voluntary and gratuitous on his part, and not in any manner connected with his duty or employment. And on this ground the prisoner was acquitted on the first count, but found guilty on the 9th. It was objected on behalf of the prisoner that stat. 52 *G.* 3. *c.* 143. § 3. on which the ninth count was framed, does not apply to persons being in the service of the post-office, and for this *Pooley's case*, 1 *East's P. C. Add.* xvii. *was cited*. The objection was over-ruled, and the prisoner found guilty, but judgment was respited, and the point submitted for the consideration of the judges, who, on conference, determined that the conviction was right. *Rex* v. *Brown*, *O. B. April* 1817. *MS. C. C. R.*

52 G. 3. c. 143. Offences against the post-office, how to be punished.

By stat. 52 *G.* 3. *c.* 143. § 3. If any person shall, after the passing of this act, steal and take from any carriage, or from the possession of any person employed to convey letters sent by the post of *G. B.*, or from or out of any post office or house or place for the receipt or delivery of letters or packets, or bags or mails of letters sent or to be sent by such post, any letter or packet, or bag or mail of letters sent or to be sent by such post, or shall steal and take any letter or packet out of any such bag or mail, every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy; and such offences shall and may be enquired of, tried, and determined either in the county where the offence shall be committed, or where the party shall or may be apprehended.

Trial.

The horse mail bags being left by the mail-rider, after he had taken possession of them for a temporary purpose for two minutes, were stolen during his absence; the

Rex v. *Robinson*, *Carlisle Spring Ass.* 1819, *cor. Wood* B. 2 *Stark. N. P.* 485. The prisoner was indicted for stealing from the possession of one *Matthew Dobson*, he the said *M. D.* being a person employed to convey letters sent by the post of *G. B.*, to wit, by the post from *Wetherby* to and from *Harrowgate* and *Knaresborough*, four bags of letters sent by the post, &c. against the form of the statute, &c. The second count charged the prisoner with stealing one *mail of letters*, &c. It appeared on the evidence, that the person mentioned in the indictment (*Matthew*

Dobson) was the mail rider from *Wetherby*, *Harrowgate*, and *Knaresborough*, and that, on the morning of the 30th *January*, he had fixed the mail portmanteau on the saddle of his horse, containing the four bags of letters, and slung the bridle of his horse on a staple at the stable-door of the post-office, about thirty yards from the door of the house; he then went into the house to put on his great coat, and staid two minutes; in the interval the robbery took place. On the part of the prisoner it was contended, that the offence did not come within the meaning of the stat. 52 *G.* 3. *c.* 143. § 3. the words of which are, If any person shall, after the passing of this act, steal and take from any carriage, or from the *possession* of any person employed to convey letters sent by the post of *G. B.*; or from, or out of any post-office, or house or place for the receipt or delivery of letters, or packets, or bags, or mails of letters, sent, or to be sent, by such post, *&c.* since this was not a stealing from the *possession* of *Matthew Dobson.* That by possession, as the word was used in this statute, was meant actual possession. The first part of the clause in question related to a taking from a carriage; but, in order to bring an offender within those words, there must be a taking actually from the carriage; if the taking was from the road by the side of the carriage, it would not be sufficient; and, therefore, by analogy, the taking from the possession, must mean the actual possession. If it were sufficient to be within thirty yards, why would not 300 or 3000 yards suffice? If it be merely sufficient, that the person entrusted has the *animus revertendi*, where would be the limit? If he staid forty minutes in a house to dine, would that be sufficient? Penal statutes, and especially statutes so penal as this, have always been construed strictly. The stealing a purse from under the pillow of the owner, had been held not to be within the statute of *Anne*, against stealing in a dwelling-house, because it was under the protection of the person and not of the house. A similar distinction was applicable in this case; the robbery was not from the person; the mail might rather be considered as under the protection of the house, or of the postmaster. The stealing must be from the presence of the person employed; it could not be said to be from his possession when he was not present, as if he went to the ale house to drink, or a mile upon business. *Topping*, *Raine*, and *Eden*, for the crown, admitted that it might be so, as had been contended, with respect to stealing from a carriage; but that, in the present instance, the mail was to be considered as in the possession of *Dobson*: the postmaster had parted with the possession, and they assimilated the case to that of a bailee or a waggoner. — *Williams* in reply, The case of the waggoner depends upon his liability over to the owner; that is a case of proprietorship, and, according to that argument, there would be no limit in respect of distance; the proper limit is that of personal presence; according to the argument, the mail would be equally in the possession of the postmaster. — *Wood* B. I am of opinion, that there is no solid ground of objection; the charge is, that the prisoner stole the bags from the possession of *Matthew Dobson*. The facts are, that the mail-rider had actually taken possession of the bags, and had strapped them upon the horse; he then went into the house. The act seems to have made it unnecessary to steal from the person; it does not say from the person, but from the possession, and is therefore more general. The person employed had possession in the first in-

R. v. Robinson.

case is within the stat. 52 G. 3. c. 143. § 3.

R. v. Robinson. stance, had he then abandoned that possession? If the bags were not in his possession when they were stolen, in whose possession were they? It might as well be contended, that if he got off his horse on the road for any occasional purpose, and the bags were then to be stolen, the stealing of them would not be within the act. The cases of stealing in a dwelling house, and of stealing privately from the person, are very distinguishable. I have no doubt that he had the possession, and therefore the objection is overruled. The prisoner was convicted.

52 G. 3. c. 143. Offences of persons assisting others employed by the post-office, how to be punished.

And by stat. 52 *G.* 3. *c.* 143. § 4. If any person shall, after the passing of this act counsel, command, hire, persuade, procure, aid, or abet any such deputy, clerk, agent, letter carrier, post boy, or rider, or any officer or person whatsoever employed by or under the said office, in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the said office, to commit any of the offences herein-before mentioned, or shall, with a fraudulent intention, buy or receive the whole or any part or parts of any such security or instrument as herein-before described, which shall have been contained in, and which, at the time of buying or receiving thereof, he or she shall know to have been contained in any such letter or packet so secreted, embezzled, stolen, or taken by any deputy, clerk, agent, letter carrier, post boy, or rider, or any other officer or person so employed as aforesaid, or which such person, so buying or receiving as aforesaid, shall at the time of buying or receiving thereof know to have been contained in and stolen and taken out of any letter or packet stolen and taken from or out of any mail or bag of letters sent and conveyed by such post, or from or out of any post-office or house, or place for the receipt or delivery of letters or packets, or bags or mails of letters sent or to be sent by such post; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy, and shall and may be tried, convicted, and attainted of such felony, as well before as after the trial or conviction of the principal felon, and whether the said principal felon shall have been apprehended or shall be amenable to justice or not.

42 G. 3. c. 81. Persons secreting or refusing to deliver up letters, which shall be found or picked up, &c. guilty of a misdemeanor.

By stat. 42 *G.* 3. *c.* 81. § 4. It is enacted, that if any person shall wilfully secrete, keep, or detain, or being required to deliver up by any deputy, clerk, agent, letter carrier, post boy, rider, driver, or guard of any mail coach, or any other officer or person whatsoever employed in any business relating to the post-office, shall refuse or wilfully neglect to deliver up any mail or bag of letters sent or conveyed, or made up in order to be sent or conveyed by the post, or any letter or packet sent by the post, or put for that purpose into any post-office, or house or place for the receipt or delivery of letters, &c., and which letter or packet, bag, or mail of letters, shall have been found or picked up by the same, or any other person, or shall by or through accident or mistake have been left with or at the house of the same, or any other person; each and every person so offending shall be deemed to be guilty of a misdemeanor, to be punished by fine and imprisonment.

5 G. 4. c. 20. Penalty on persons employed

And stat. 5 *G.* 4. *c.* 20. § 10. reciting, that serious loss, inconvenience, and injury may be sustained by the wilful embezzling or purloining of printed votes or proceedings in parliament, and

printed newspapers sent or to be sent by the post, within the U. K, enacts, that from and after the passing of this act, (*viz.* 12th *April* 1824,) if any deputy, clerk, agent, letter carrier, letter sorter, post boy, or rider, or any other officer or person whatsoever employed, or hereafter to be employed, in receiving, stamping, sorting, charging, conveying, or delivering letters or packets, or in any other business relating to the post office in the said U. K., shall wilfully purloin, embezzle, secrete, or destroy, or shall wilfully permit or suffer any other person or persons to purloin, embezzle, secrete, or destroy any printed votes or proceedings in parliament, or printed newspapers, or any other printed paper whatsoever, sent or to be sent by the post without covers, or in covers open at the sides, each and every such person or persons so offending shall be deemed and taken to be guilty of a misdemeanor, and be punished by fine and imprisonment, and such offences shall and may be enquired of, tried, and determined, either in the county where the offence shall be committed, or where the party shall or may be apprehended.

5 G. 4. c. 20.

In the post office embezzling votes, parliamentary proceedings, or newspapers, &c.

By stats. 9 *Ann.* c. 10. §. 12., and 5 *G.* 3. *c.* 25. § 9, 10. Persons appointed from time to time to measure the post roads shall be sworn to perform the same according to the best of their skill and judgment, before a justice of the peace, who shall make a certificate thereof in writing, to be entered in the general post-office, without fee.

Measurer's oath.

(3.) Postage of Inland Letters.

By stat. 41 *G.* 3. U. K. *c.* 7., so much of stats. 9 *Ann.* *c.* 10., 5 *G.* 3. *c.* 25. 24 *G.* 3. *c.* 37., and 37 *G.* 3. *c.* 18., as establishes certain rates of postage for carriage of letters, is repealed; and in lieu thereof the following imposed:

41 G. 3. (U K.) c. 7.

	Miles.		Miles.	Single.	Double.	Treble.	Ounce.
Above	—	not exceeding	15	3*d.*	6*d.*	9*d.*	1*s.*
———	15	———	30	4*d.*	8*d.*	1*s.*	1*s.* 4*d.*
———	30	———	50	5*d.*	10*d.*	1*s.* 3*d.*	1*s.* 8*d.*
———	50	———	80	6*d.*	1*s.*	1*s.* 6*d.*	† 2*s.* 6*d.*
———	80	———	120	7*d.*	1*s.* 2*d.*	1*s.* 9*d.*	2*s.* 4*d.*
———	120	———	170	8*d.*	1*s.* 4*d.*	2*s.*	2*s.* 8*d.*
———	170	———	230	9*d.*	1*s.* 6*d.*	2*s.* 3*d.*	3*s.*
———	230	———	300	10*d.*	1*s.* 8*d.*	2*s.* 6*d.*	3*s.* 4*d.*

† *Sic.*

But where the distance above 300 miles is more than 100 miles, a further sum of, for every single letter, 1*d.*; double 2*d.*; treble 3*d.*; an ounce 4*d.*; and so on progressively for every further distance of 100 miles a like further sum, for a single letter, 1*d.*; double, 2*d.*; treble, 3*d.*; an ounce, 4*d.*; and so in proportion.

§ 9. For all letters to and from *Ireland*, conveyed by packet boats, shall be paid, above all other rates, for every single letter, 2*d.*; double, 4*d.*; treble, 6*d.*; an ounce, 8*d.*; and so in proportion for more than an ounce.

Letters to and from Ireland.

By stat. 45 *G.* 3. *c.* 11. § 1. the following *additional* charges are payable:

45 G. 3. c. 11.

45 G. 3. c. 11. Within *G. B.*, and also from *G. B.* to *Ireland*, for every single letter, 1*d.*; double, 2*d.*; treble or other letter under an ounce, 3*d.* ounce in weight, and every packet not exceeding an ounce, 4*d.*: and so in proportion for every other letter or packet of greater weight than an ounce.

52 G. 3. c. 88. By stat. 52 *G.* 3. *c.* 88. Additional for single letter, 1*d.* when above 20 miles:—2*d.* double; 3*d.* treble; and for every ounce in weight, and for every packet not exceeding an ounce, 4*d.*; and so in proportion for every letter or packet above an ounce.

26 G. 2. c. 13. Letters inclosing patterns. By stat. 26 *G.* 2. *c.* 13. § 8. For every single letter or cover containing one or more papers with patterns, or one or more patterns of cloth, silk, or stuff, or one or more samples of any other sort of goods, or one or more piece or pieces of any other sort or thing inclosed therein or affixed thereto, though not paper, if the same do not weigh an ounce; the rates payable by 9 *Ann. c.* 10. for a double letter.

35 G. 3. c. 53. But by stat. 35 *G.* 3. *c.* 53. § 9. Every such packet or cover shall be sent open at the sides, and without any letter or writing in, upon, or with such packet or cover, other than the name of the person sending the same and the place of his abode, and the prices of the articles contained therein or affixed thereto.

By stat. 45 *G.* 3. *c.* 11. § 1 For every such letter or packet with such inclosures, sent according to the 26 *G.* 2. *c.* 13. and 35 *G.* 3. *c.* 54. there shall be paid the sum of 1*d.*

52 G. 3. c. 88. Additional rates on letters inclosing patterns. And by stat. 52 *G.* 3. *c.* 88. § 2. For the conveyance by the post of every letter, packet, or cover, containing patterns of cloth, silk, stuff, or samples of other goods or other sort of thing, not exceeding one ounce in weight, if the same letter or packet or cover shall be closed or not open at the sides, an additional rate of 2*d.* for every such letter, packet, or cover: and for the conveyance by the post of every letter or cover containing one or more paper or papers with patterns, or containing one or more pattern or patterns of cloth, silk, or stuff, or one or more sample or samples of any other sort of goods, or one or more piece or pieces of any other sort of thing inclosed therein or affixed thereto, though not on paper, if the same do not weigh an ounce, an additional rate of one penny for every such letter, so as every such letter, packet, or cover shall be sent open at the sides and without any letter or writing in, upon, or with such packet or cover, other than the name of the person sending the same, and the place of his abode, and the prices of the articles contained therein, or affixed thereto.

6 G. 1. c. 21. By stat. 6 *G.* 1. *c.* 21. § 51. Bills of exchange written on the same piece of paper with a letter, and several letters to several persons, written on the same piece of paper, shall pay as so many distinct letters.

26 G. 2. c. 13. By stat. 26 *G.* 2. *c.* 13. § 7. Writs or other proceedings at law, inclosed or written on the same piece of paper with a letter, shall pay as so many distinct letters.

41 G. 3. (U. K.) c. 7. And by stat. 41 *G.* 3. (U. K.) *c.* 7. § 4. All merchants' accounts, bills of exchange, invoices, and bills of lading, shall be rated as so many several letters, or by the ounce, according to the rates by this act made payable on letters conveyed by the general post.

By stat. 24 *G.3. sess.* 2. *c.* 37. § 4. For preventing prohibited goods being imported in letters or packets, the officer employed at the post-office where any foreign letter or packet containing any inclosure shall be received may carry the same before a justice for the county, or magistrate for the town, in which such office is situate, and upon oath made that he suspects the same to contain goods which are prohibited to be imported, or upon which a duty is payable upon importation, shall, in the presence of such magistrate, cut open a slit in such letter or packet not exceeding two inches in length; and if it shall appear to such magistrate that any such goods are contained therein, he shall open the same, and in the presence of such officer destroy such goods, and inclose such letter or packet in a cover, in which shall be written an attestation signed by him of the name of the officer who brought the same, and the time when, and the quantity and description of goods found therein, and that the same were destroyed; which cover shall be sealed and forwarded to the commissioners of the customs, who, on receipt thereof, shall pay to the said officer any sum not exceeding 5*l.* nor less than 10*s.* 24 G. 3. sess. 2. c. 37. Prohibited goods, suspected to be in foreign letters.

§ 5. And if on making such slit as aforesaid no such goods shall be found in such letter or packet, such magistrate shall inclose the same in a cover, and shall therein also send an attestation signed by him that the said opening was made in his presence, and shall deliver the same sealed up to the said officer, to be forwarded by the ordinary course. And no additional postage shall be charged in consequence of such proceeding.

By stat. 5 *G.* 4. *c.* 20. § 1. It is enacted, that from and after the passing of this act, on 12th *April* 1824, it shall and may be lawful to and for H. M's postmaster general and his deputy and deputies in his discretion, to receive, at the general post-office in *London*, packets containing re-issuable cash notes only, issued by country bankers under annual licence, and payable at the houses of their respective agents in *London*, which cash notes have been paid by such agents in *London*, for conveyance by the post within *G. B.* at his discretion, to the bank in the town or place from which such cash notes were first issued, and to no other bank, town, or place whatever; and to demand, have, receive, and take for the conveyance of such packets, to and for the use of H. M., his heirs and successors, rates of postage not exceeding ¼th part of the rates and duties of postage by law established or which may hereafter be established for the conveyance of letters and packets by the post; any law, statute, custom, or usage to the contrary notwithstanding. 5 G. 4. c. 20. Re-issuable cash notes issued by country bankers, and paid by their agents in London, may be conveyed by post to the banks whence first issued, at the rates of postage herein mentioned.

§ 2. Provides, That no such packet shall be conveyed under the provisions in this act unless the same shall exceed 6oz. in weight, and shall be superscribed "Re-issuable country bank notes only," and certified by the signature of the agent or agents of such country bank, or one of them, in his or their own handwriting; and provided that the said packets shall contain no writing, communication, matter or thing whatever. The packets conveyed shall exceed six ounces, and be superscribed as herein directed.

§ 3. Provides, That such packets shall be delivered to the postmaster general, or his deputy or deputies, at the general post-office in *London*, at such hours in the day and under such regulations as the postmaster general for the time being shall in his discretion from time to time appoint, and such packets shall also Time of delivery at the post-office to be regulated by the postmaster general.

5 G. 4. c. 20. be delivered by the deputy or deputies of the postmaster general in the country under such regulations and restrictions as the postmaster general for the time being shall from time to time think fit to appoint.

Packets may be detained and examined. By § 4. It shall and may be lawful to and for H. M.'s postmaster general, and his deputy and deputies, in his or their discretion, to detain any such packet, and in the presence of the sender or senders thereof, or in his or their absence, in case of non-attendance after notice in writing left at his or their place of abode requiring his or their attendance, to open, examine, and search the same, in order to discover whether any writing, communication, matter, or thing, other than re-issuable notes only, shall be contained therein; and in case upon examination thereof it shall be discovered that any such writing, communication, matter, or thing other than re-issuable notes, shall be contained therein, then the sender or senders of such packets shall forfeit 200*l.*, to be recovered with full costs of suit by action of debt, bill, plaint, or information, in any of H. M.'s courts of record in *G. B.*, when no essoin, protection, penalty or wager of law shall be admitted, and it shall be lawful to and for H. M.'s postmaster general or his deputy or deputies to retain such packet until such penalty shall be recovered and paid.

Penalty on finding any thing other than re-issuable bank notes, 200*l.*

Application of penalties. By § 5. One moiety of the pecuniary penalty hereby imposed shall be payable to H. M., and the other to the informer.

Of rates imposed. By § 6. The monies to arise by the several rates and duties aforesaid (except the expenses of management and collection,) shall be paid into the Exchequer at *Westminster*, and carried to the consolidated fund of the U. K.

45 G. 3. c. 11. Two-penny post letters delivered out of general post delivery, 1*d.* additional. And by stat. 45 *G*. 3. *c*. 11. § 1. For the conveyance of every letter, originally sent by the two-penny post, and not first passing and afterwards to pass by the general post, directed to or sent from places beyond the delivery of the general post letter-carriers, 1*d.*; for every letter originally passing by the general post, directed to places beyond the delivery of the general post, and afterwards delivered by the two-penny post, 2*d.* (*a*)

(4.) Postage of Foreign Letters.

37 G. 3. c. 18. By stat. 37 *G*. 3. *c*. 18. § 4. (which imposed certain rates of postage, and which rates were repealed by stat. 41 *G*. 3. (U. K.) *c*. 7.) it was enacted that over and above such rate, all letters and packets passing to or from *Portugal* from or to *England*, shall be charged with the full inland postage by this act (37 *G*. 3. *c*. 18.) established.

41 G. 3. (U. K.) c. 7. By stat. 41 *G*. 3. (U. K.) *c*. 7. § 1. The rates of postage imposed by stats. 9 *Ann.* *c*. 10. 5 *G*. 3. *c*. 25. 24 *G*. 3. *sess*. 2. *c*. 37. and 37 *G*. 3. *c*. 18. are repealed.

And by § 2. There shall be paid for conveyance of letters to or from any place of the U. K. from or to any place out of the same, not within H. M.'s dominions, in addition to all other rates now payable, for every single letter 4*d.*; double, 8*d.*; treble or other

(*a*) The penny-post was set up in *London* by one *Murray* in 1681; claimed by Government in 1711; and raised to 2*d.* in 1794.

under an ounce, 1*s.*; ounce, and every packet not exceeding an ounce, 1*s.* 4*d.*; and so in proportion for every other of greater weight than an ounce.

By stat. 52 *G.* 3. *c.* 88. From *G. B.* to the king's dominions in *America*, additionally, single letter, 2*d.*; double, 4*d.*; treble letter, or other letter under an ounce, 6*d.*; packet not exceeding an ounce, 8*d.*; and so in proportion for every letter or packet greater than an ounce in weight. 52 G. 3. c. 88.

By stat. 3 *G.* 4. *c.* 105. § 1. It shall be lawful to take and receive the following additional rates of postage for the conveyance of letters and packets from *Liverpool* to the *Isle of Man*, viz. Isle of Man. 3 G. 4. c. 105.

Rates of postage.

For every single letter, - -	£0	0	6
For every double letter, - -	0	1	0
For every treble letter, - -	0	1	6
And for every ounce in weight, -	0	2	0

And so in proportion for every letter and packet exceeding the weight of an ounce.

§ 2. It shall be lawful for the postmaster general to cause the rates of postage hereby chargeable, to be paid either prior to such letters and packets being forwarded, or on delivery, as to him in his discretion, may seem meet. Postage, how payable.

§ 3. The rates and duties aforesaid (except the monies which shall be necessary to defray the expenses of collection and management of the same) shall be paid into the exchequer, and carried to the consolidated fund. Duties to be carried to the consolidated fund.

By stat. 45 *G.* 3. *c.* 11. from *March* 12, 1805, the following additional sums are made payable for the conveyance of foreign letters, viz. 45 G. 3. c. 11.

For the conveyance of letters by post, from and to *G. B.* to and from parts beyond the seas, not within H. M.'s dominions, additionally, single letter, 2*d.*; double, 4*d.*: treble letter, or other letter not exceeding an ounce, 6*d.*; packet not exceeding an ounce, 8*d.*; and so in proportion, for every other letter or packet of greater weight than an ounce,

§ 2. And over and above the rates and duties hereby granted, all letters and packets passing from *G. B.* to the *British* dominions in *America*, to or through the kingdom of *Portugal*, to the islands of *Guernsey* and *Jersey*, and the *Isle of Man*, and all letters and packets from those respective countries to *G. B.* shall be charged with the inland rate of postage hereby established, of 1*d.* for each single letter, and so in proportion for double, treble, and other letters, according to the weight thereof, for their inland conveyance. Letters passing to or from the British dominions in America, &c. to be charged with an additional rate.

Additional rates of stat. 52 *G.* 3. not to extend to *Guernsey*, *Jersey*, or *Isle of Man*, excepting postage within *G. B.*

By stat. 52 *G.* 3. *c.* 88. For conveyance of letters by post to and from parts beyond the seas, whether or not within H. M.'s dominions, for every single letter, 2*d.* additional rate; double, 4*d.*; treble, or other under an ounce, 6*d.*; every packet not exceeding an ounce, 8*d.*; and so in proportion for every other letter of greater weight than an ounce. 52 G. 3. c. 88.

5. Postage for Conveyance by Packets.

39 G. 3. c. 76. Letters may be conveyed by vessels not being packet-boats.

By stat. 39 *G.* 3. *c.* 76. § 1. The postmaster general and his deputy may collect and receive letters and packets of letters, directed to places within H. M.'s dominions, also to any the kingdoms and countries beyond the seas, and forward the same by any vessel that he shall think fit (although not a packet boat), and also take for every letter and packet delivered to him or them for conveyance as aforesaid, a sum not less than one-half of the rates payable by law for such respective letters and packets, if the same were conveyed by packet boats; and where no rate of postage is already established, then for such letters and packet rates as near as may be equal to one-half of what is now paid for letters sent beyond the seas.

See 54 G. 3. c. 169. infra.

§ 2. Such postmaster general shall take for every letter and packet brought by vessels (other than packet boats), in manner aforesaid, from places within H. M.'s dominions, and from any the kingdoms and countries beyond the seas into *G. B.*, to be conveyed by inland postage, 4*d.* for every single letter, and so in proportion for packets, in addition to any inland postage which may arise upon the inland conveyance of such letters and packets; and for the encouragement of the masters of such vessels, such postmaster general shall allow them 2*d.* a letter or packet upon all such as they shall have or take on board such vessels, provided such letters or packets have been delivered to them from the post-office; and in like manner on their arrival from parts beyond the seas on their delivery at the post-office of any post town at which they shall touch or arrive, 2*d.* a letter or packet for all such as they shall have on board, provided the same be regularly delivered.

§ 3. And the postmaster general may order the rates of postage chargeable to be paid either prior to such letters and packets being forwarded, or on the delivery thereof, as to him shall seem meet.

54 G. 3. c. 169.

[55 G. 3. c. 153.]

Persons bringing letters to post-office and paying certain rate of postage empowered to forward same by any vessel not being a packet boat.

By stat. 54 *G.* 3. *c.* 169. § 1. so much of stat. 39 *G.* 3. *c.* 76. § 2. as grants a postage of four-pence, &c. for ship letters is repealed, And stat. 55 *G.* 3. *c.* 153. § 27. repeals § 2. 5. 6. 7. 8. 9. 10. 11. 12. 13 & 14. of stat 54 *G.* 3. *c.* 169. By stat. 54 *G.* 3. *c.* 169. § 3. It shall be be lawful for H. M.'s postmaster general and his deputies to receive letters and packets directed to places within H. M.'s dominions, and to kingdoms and countries beyond the seas, from any person who may bring the same to any post-office in *G. B.*, and who may be desirous to forward such letters themselves, and to affix upon each letter or packet such stamp, mark of postage, or designation as the postmaster general in his discretion shall think proper and order, and thereupon to demand and receive for the use of H. M., a rate of postage of one-third part of the rates and duties payable by law for such respective letters and packets if the same were conveyed by packet boats, and in cases where no rate of postage is already established, then to demand, have, receive, and take for such letters and packets, rates as near as can be ascertained equal to one-third part of what is now paid for letters sent beyond the seas, and upon payment thereof to return such letters and packets to the person or persons bringing the same, and it shall be lawful for such person to forward such letters

and packets to the places to which they may be directed by any ships or vessels that he may think proper, not being packet boats, without incurring any penalty therefore, and without payment of any other rate or duty of postage. 54 G. 3. c. 169.

Postmaster general may authorise persons to collect letters and forward same by vessels other than packet boats.

§ 4. It shall be lawful for H. M.'s postmaster general, by writing under his hand, and under seal of the office of postmaster general, to license and authorise any person to collect letters and packets in *G. B.* directed to places within H. M.'s dominions, and to kingdoms and countries beyond the seas, for the purpose of being forwarded according to their directions by any ships or vessels, other than packet boats, provided that such persons so to be licensed shall, previous to forwarding the same, bring such letters and packets to the post-office of the town or place to have a stamp, mark of postage, or designation put thereon, which stamp, mark of postage, or designation, the postmaster general and his deputies are hereby authorised and required to put thereon, and to demand, receive, and take, for the use of H. M. the same rates of postage as are hereby made payable for letters and packets to be forwarded by persons bringing the same in manner hereinbefore provided; and upon such payment being made to return such letters and packets to the persons so to be licensed, and it shall be lawful for such authorised persons to forward such letters and packets by any ships or vessels that he or they may think proper, not being packet boats, without incurring any penalty therefore, and without payment of any other rate of postage.

§ 15. This act shall not extend to restrain nor to prevent the *East India* company, nor their court of directors, from sending and receiving, and causing to be sent and received to and from any of their governments and servants abroad, all packets, letters, and papers whatsoever, relating to the affairs, business, and concerns of the said company, and of their several governments abroad, in the manner heretofore accustomed by the said company and their court of directors, without payment of any postage or duty, nor to subject any person to any penalty in respect thereof.

President of the board of commissioners for the affairs of India to send and receive letters free from postage.

§ 16. It shall be lawful for the president of the board of commissioners for the affairs of *India* for the time being, to send and receive letters and packets by the post free from the duty of postage, within the U. K., in the same manner and under such restrictions as the Lord High Chancellor of *G. B.* is, by stat. 46 *G.* 3. *c.* 61. § 1. authorised to send and receive letters and packets free from postage.

46 G. 3. c. 73. Packet postage, to and from Gibraltar,

By stat. 46 *G.* 3. *c.* 73. is granted (over and above all other rates for such letters and packets within the U. K.) for every letter and packet carried or conveyed by packet boats from or to the port of *Falmouth*, or from or to any other convenient port in the U. K. to or from the town and fortress of *Gibraltar*, a packet postage according to the rates and sums in sterling money hereinafter mentioned, the same being rated either by the letter or the ounce.

For every single letter, 1*s.* 9*d.*; double, 3*s.* 6*d.*; treble, 5*s.* 3*d.*; and for every ounce 7*s.*; and so in proportion for every packet of greater weight than an ounce.

to and from Malta,

And to and from the island of *Malta*, for every single letter, 2*s.* 1*d.*; double, 4*s.* 2*d.*; treble, 6*s.* 3*d.*; ounce, 8*s.* 4*d.*; and so in proportion for every packet of greater weight than an ounce.

46 G. 3. c. 78.

between Gibraltar and Malta,

And between *Gibraltar* and *Malta*, every single letter, 6*d.*; double, 1*s.*; treble, 1*s.* 6.; ounce, 2*s.*; and so in proportion for every packet of greater weight than an ounce.

to and from Madeira,

And by stat. 48 *G.* 3. *c.* 116. To or from the port of *Falmouth*, from or to *Madeira*, single letter, 1*s.* 6*d.*; double, 3*s.*; treble 4*s.* 6*d.* ounce, 6*s.*; and so in proportion for every packet greater than an ounce.

to and from Brazil.

And to or from *Brazil*, or any of the *Portuguese* territories in *South America*, single letter, 2*s.* 5*d.*; double, 4*s.* 10*d.*; treble, 7*s.* 3*d.*; ounce, 9*s.* 8*d.*; and so in proportion for any packet greater than an ounce.

55 G. 3. c. 153. Rates for newspapers, &c.

By stat. 55 *G.* 3. *c.* 153. § 2. It shall be lawful for any person to send and receive by any mails dispatched to and from *the East Indies, the Mauritius*, and *the Cape of Good Hope*, any newspapers or printed prices current, and also any printed papers liable to the stamp duties, and duly stamped, paying for the same three-pence for each packet, not exceeding one ounce; and for each packet exceeding one ounce, at the rate of three-pence *per* ounce; and provided that the same be sent in covers open at the sides or ends.

Mails may be carried by ships of war.

§ 3. And as it may on some occasions be of advantage to correspondence, that letters and packets should be sent to and from the *East Indies* and the *Cape of Good Hope*, by H. M's ships of war and store ships, and by the ships in the service of the United *East India* Company sailing between this country and *India* and the *Cape of Good Hope*, and by ships employed in the private trade to and from *India*; it is enacted, that it shall be lawful for the postmaster general in his discretion, with the consent of the lords commissioners of the admiralty, to make up and send mails of letters to and from any port or place in the *East Indies*, within the limits of the said united company's charter (except the dominions of the Emperor of *China*), and to and from the *Cape of Good Hope*, by any of his majesty's ships of war and store ships, or by any of the ships in the service of the said U. C., or by ships employed in the private trade to and from *India*; and that so often as mails of letters shall be so conveyed, it shall be lawful for the postmaster general and his deputies, for the use of his majesty, to demand, and take the same rates and duties, as if the letters were conveyed by vessels or packet boats, to be established under the authority of this act.

Commanders authorised to receive mails.

§ 4. Enacts, that the commander of any such ship of war, with the permission of the lords commissioners of the admiralty, and the commander of any such ship in the service of the said U. C. with the consent of the said company, and the commander of any ship employed in the private trade to and from *India*, with the consent of his owners, is hereby authorised and required to receive on board his ship, such mails of letters and packets, and to convey and deliver the same accordingly; and such commanders shall not incur any penalty for receiving on board or conveying such letters and packets, in manner aforesaid.

The East India Company not to charge postage, except for inland, &c.

§ 5. Enacts, that it shall not be lawful for the said U. C. or the commander of any ship in the service of the said company, or any commander of any ship in the private trade to and from *India*, to charge, demand, or receive any rate of postage for any mails of letters, except any such postage as may be legally due to the said

company for the inland postage, or conveyance of any such letters in *India*, or for any sealed bags, packages, or parcels of letters, which may at any time be forwarded by the postmaster general, by the ships of the said United Company, or by any such private ship. 55 G. 3. c. 153.

§ 6. Provides, that it shall be lawful for the postmaster general, whenever the ships of the said U. C. or any private ships, are employed as packets, to pay the said U. C. and the owners of any such private ships, for the freight or conveyance of any such mails of letters, such reasonable sum, and in such manner, as shall be authorised by any three of the lords of the treasury.

Postmaster general to pay the company for conveyance of mails.

§ 7. Enacts, that a mail shall be made up and dispatched to *India* once in every month, either by the vessels to be established and hired by the postmaster general under the authority of this act, or by a ship of war, or a ship in the service of the *East India* company, or by a ship employed in the private trade to and from *India*.

A mail to be made up monthly for India.

§ 8. It shall be lawful for the postmaster general in such proportions and in such manner as any three of the lords commissioners of the treasury, shall by warrant in writing direct, to permit the exportation on freight, or on account of the owners, or of the public service, in such vessels or packet boats navigated according to law, from the port of *London*, or any port or ports within the kingdom of *G. B.* or any intermediate port between *G. B.* and *the East Indies*, to all ports and places within the limits of the charter of the said U. C. and to the islands of *Saint Helena*, the *Mauritius*, and the *Cape of Good Hope* (except the dominions of the emperor of *China*) any goods, wares, and merchandise (tea excepted) which can now or may at any times hereafter be legally exported; and also to permit the importation on freight, or on account of the owners, or of the public service, in such vessels or packet boats navigated according to law, from all ports and places within the limits of the said U. C.'s charter, and from the *Cape of Good Hope*, the *Mauritius*, and the island of *Saint Helena* (except as aforesaid) into the port of *London*, or any port in *G. B.* of any goods, wares, and merchandise which are now or may at any time hereafter be legally imported; subject nevertheless to the several restrictions, &c. in this act contained.

Goods allowed to be carried in packets.

Except tea.

§ 9. It shall be lawful to ship, carry, or put on board, or permit or suffer to be shipped, carried, or put on board such vessels or packet boats, and any ships or vessels legally trading to and from the *East Indies*, such quantity of tea as shall be requisite for the use of the crew of any such ship, during the voyage, not exceeding two pounds for each man on board; and in case there shall be found on board any such ships or vessels, on their arrival at any port or place in the *British* islands, or within 200 miles of the same, any tea exceeding in quantity 100 pounds weight, every commander shall be liable to a penalty of two pounds for every pound weight of tea exceeding such a quantity.

Quantity of tea on board limited.

§ 10. It shall not be lawful to export or import any goods, wares, or merchandise in any vessel or packet boat to be employed under the authority of this act, unless such vessel or packet boat shall be of the burthen of 350 tons at the least.

55 G.3. c.153. Penalty on persons delaying sailing after receiving the mail, 500l.

§ 11. If any commander of any vessel or packet boat to be established under the authority of this act, having received H. M.'s mail on board, and having received his clearance, shall wilfully neglect to sail and proceed on his voyage within 24 hours after the time of receiving the mail on board and his clearance (wind and weather permitting), or shall wilfully deviate from the course of his voyage, such commander for every such neglect shall forfeit 500*l.* provided that it shall be lawful for the court of directors of the said U. C. to give directions to delay the sailing of any ship or vessel belonging to and employed by the said company, for a time to be limited or specified, giving notice of such directions to the postmaster general within 24 hours thereof.

Rates of letters conveyed in vessels not employed as packets from Great Britain.

§ 12. Enacts, that for the port and conveyance of all the letters and packets that shall be carried or conveyed by vessels not employed as packets from *G. B.* to the *Cape of Good Hope*, the *Mauritius*, and the *East Indies*, there shall be charged and payable a sea postage of one shilling and two-pence a single letter, and so in proportion for packets; such postage to be paid on delivery of the letters at the *Cape*, the *Mauritius*, and the *East Indies*, as the case may be.

Penalty on persons sending or conveying letters to India without authority.

§ 13. If any person shall send without authority of the postmaster general to the *Cape of Good Hope*, the *Mauritius* or the *East Indies*, any letter or packet, or if any commander of any ship or vessel, or any other person shall carry or convey any letter or packet without such authority to the *Cape of Good Hope*, the *Mauritius*, or the *East Indies*, every such person so offending shall forfeit 5*l.* for every letter so sent.

Commanders of vessels to take charge of the bags of letters delivered by order of the postmaster.

§ 14. The commander of any ship sailing to the *Cape of Good Hope*, the *Mauritius*, or the *East Indies*, is hereby authorised and required to take charge of and convey any bags of letters subject to the aforesaid rate of one shilling and two-pence, which shall be delivered to him by order or authority of the postmaster general.

An allowance of 2*d.* for each letter to be paid such commanders.

§ 15. And for the services performed by the commanders of such vessels, it is enacted, that they shall be entitled to receive on their arrival in port, either in *G. B.* or in *India*, on delivering at the post-office all such letters and packets which they shall have on board, the sum of two-pence for every letter or packet which he or they shall so deliver.

Rates of letters by vessels not employed as packets from India.

§ 16. Enacts, that for the port and conveyance of all and every the letters and packets that shall be carried or conveyed by vessels not employed as packets from the *Cape of Good Hope*, the *Mauritius*, and the *East Indies* to *G. B.* there shall be charged and payable a sea postage of eight-pence for each single letter, and so in proportion for packets.

Rate of sea postage from India not to exceed 5*s.* for any packet of whatever weight.

§ 17. Provides that for twelve months from the passing of this act, no letter or packet of whatever weight or description coming from the *Cape of Good Hope*, *Mauritius*, or *India*, shall be chargeable with a higher rate of sea postage than five shillings for such letter or packet.

Post offices to be established.

§ 18. It shall be lawful for the postmaster general in his discretion, to establish post-offices, and appoint deputy postmasters and other officers, for the due execution of this act, in

the U. K., and in any of the presidencies of the said united company, and the same from time to time to remove and displace, and others to appoint in their stead; and all such persons so to be appointed shall give security to the satisfaction of the postmaster general or his agents, for the due discharge of their respective duties, and accounting for and paying unto the treasurers of the said united company, at their respective presidencies, on account of the revenue of the post-office, all sums which they shall respectively receive for the port of letters and packets, or in any other manner whatsoever; and no such postmaster or other person shall at any time retain in his hands more than 1000*l.* of the public money. 55 G. 3. c. 153

§ 19. The treasurers of the said U. C., at their respective presidencies, are hereby authorised and required to receive all such sums, and from time to time to remit the same to the postmaster general, in such manner and under such regulations as shall be agreed upon by the said united company and the postmaster general.

Treasurers of the company to remit money to postmaster general.

§ 20. It shall be lawful for the president of the board of commissioners for the affairs of *India* for the time being, to send and receive letters and packets to and from the *East Indies*, free from the duties of postage; and it shall be lawful for the secretary of state for colonial affairs, and the secretaries to the treasury for the time being, to send and receive letters and packets to and from the *Cape of Good Hope*, the *Mauritius*, and *Ceylon*, free from the duty of postage.

President of the board of commissioners to send and receive letters free from India. Secretary of state and the treasury, from the Cape, &c.

§ 21. It shall be lawful for the commissioners for the affairs of *India*, receiving salaries in virtue of such office, and for the secretary to the said commissioners for the time being, to send and receive letters and packets to or from any port or place within the limits of the charter of the *East India* company, or the *Cape of Good Hope*, provided that the letters and packets so to be sent and received by such commissioners or secretary, by any one packet or other vessel, appointed to carry the mail, do not collectively exceed the weight of five ounces received, and five ounces sent, by each such commissioners or by such secretary.

Commissioners for the affairs of India and secretary to send and receive letters free to and from India and the Cape.

§ 22. It shall be lawful for the chairman and deputy chairman of the said united company for the time being, and for one year after the said chairman and deputy chairman shall have quitted their respective offices, to send and receive letters and packets free from postage, to and from the *East Indies* only; provided that such letters and packets shall be upon the concerns of the said company only, and provided that such letters shall be addressed or superscribed wholly in the hand-writing of the chairman or deputy chairman, and his name added thereto in his hand-writing; and also, it shall be lawful for the directors of the said company to send and receive letters and packets to and from the *East Indies* only, addressed and superscribed in like manner, free from postage for one year from the passing of this act.

Chairman and deputy-chairman to send and receive letters free from India.

§ 23. It shall be lawful for the directors of the said company for the time being, to send and receive letters and packets free from postage to and from the *East Indies* only, by the ships of the said company, provided that such letters so to be sent and received do not collectively exceed the weight of five ounces, by each ship

Directors may send and receive letters free from India by the ships of the company.

55 G. 3. c. 153. of the said company; and such directors may continue to send and receive such letters and packets for one year after he or they shall have quitted the direction.

Public officers who now send and receive letters free, to have the same privilege to and from India.

§ 24. Nothing in this act contained shall extend to prevent such public officers who now send and receive letters and packets free of postage, from sending and receiving letters and packets to and from the *Cape of Good Hope*, *Mauritius*, *Saint Helena*, and the *East Indies*, in the same manner as they are now authorised by law to send and receive letters and packets free from postage.

Powers of recited act, extended to this act. Vide post. (6) and ante, page 388.

§ 26. All clauses, powers, penalties, &c. contained in the 46 *G.* 3. *c.* 92. so far as relates to soldiers' and seamen's letters, shall be applied and extended to this act as fully, to all intents and purposes, as if the same had been particularly re-enacted herein. See § 27. p. 754.

Letters brought by vessels not packets, except from India, &c.) to pay 8*d.* for a single letter, and masters of vessels allowed 2*d.*

§ 28. It shall be lawful for the postmaster-general to demand and take, for every letter which shall be brought by ships and vessels (other than packet boats) from places within H. M.'s dominions, and from any the kingdoms and places beyond the seas, into *G. B.*, except from the *Cape of Good Hope*, the *Mauritius*, and the *East Indies*, a sea postage of eight-pence for every single letter, and so in proportion for packets, in addition to any inland or internal postage which may arise upon the inland conveyance of such letters and packets; and for the encouragement of the masters of such ships or vessels, it shall be lawful for the postmaster-general to allow all such masters the sum of two-pence a letter or packet upon all such letters and packets as they respectively, on their arrival from parts beyond the seas, shall deliver unto the deputy or deputies of the postmaster-general, for such place or post town at which they shall touch or arrive.

Penalty on persons opening bags, 200*l.*

§ 29. If any master of any ship or vessel shall open any sealed bag, package, or parcel of letters, with which he shall have been entrusted, or shall take out of such bag, package, or parcel, any letter or letters whatsoever, or shall not duly deliver such bag, package, or parcel with the letters at the post-office on his arrival in port, without wilful or unavoidable delay, after his arrival, every such master so offending shall forfeit 200*l.*

Owners may send letters on board their own vessels to India, &c. free from sea postage, on certain conditions.

§ 30. It shall be lawful for the owners, charterers, or consignees of vessels, to send their letters on board their own ships, from any port in *G. B.* to the *Cape of Good Hope*, the *Mauritius*, and the *East Indies*, free from the sea postage; provided, that such letters shall be endorsed with the words "owners', or charterers', or consignees' letter," and the christian and surname and place of abode of the owner, charterer, or consignee, or the firm of the owners who shall be the writer of the same; and provided that the letter so sent and endorsed by any owner, charterer, or consignee, or the whole number of letters, if there shall be more than one letter from such owner, charterer, or consignee, shall not collectively exceed the weight of twenty ounces.

Owners or shippers of goods may do the same.

§ 31. It shall be lawful for the owners or shippers of goods to send letters with their goods on board any ship or vessel from any port in *G. B.* to the *Cape of Good Hope*, the *Mauritius*, and the *East Indies*, free from the ship letter postage; provided, that such letter shall be endorsed with the christian and surname of the

writer, or the firm of the writers, and with the words "owners or shippers of goods" shipped on board the [*state the name of the ship*] bound to [*state the place*]; and provided the letter or packet of any such owners or shippers, or the whole number of letters, if there shall be more than one from such owners or shippers, shall not collectively exceed six ounces. 55 G. 3. c. 153.

§ 32. It shall be lawful for the owners, charterers, or consignees of vessels, resident in *G. B.*, to receive their letters by their own vessels from any place within H. M.'s dominions, or countries beyond the seas, free from the sea postage; provided, that such owners, charterers, or consignees shall be described as such in the address and superscription of such letters; and that such letters to any one owner, charterer, or consignee, shall not, if coming from any place in the *East Indies*, exceed collectively twenty ounces; and if coming from any other part beyond the seas, exceed collectively six ounces. Owners of vessels may receive letters in like manner;

§ 33. It shall be lawful for the owners or consignees of goods on board ships arriving from abroad to receive letters free from the sea postage by such ships, provided that such owners or consignees shall be described as such in the address and superscription thereof, and provided it shall appear by the ship's manifest that such persons actually have goods on board such ships, and that the letter or letters addressed to any one such owner or consignee shall not collectively exceed six ounces. as also owners or consignees of goods.

§ 35. Nothing in this or in any other act shall extend to charge with the duty of postage any letters or packets addressed by the governors of H. M.'s settlements of *Ceylon*, the *Cape of Good Hope*, or the *Mauritius*, or by the secretaries of these governments respectively, to the agents of those respective governments residing in *England*, or by such agents to such governors or secretaries; provided, that the contents of such letters and packets relate *bonâ fide* to the public service or concerns of such governments, and that they are superscribed by such governor, secretary, or agent respectively. Letters from the governor of Ceylon, &c. to the agents of their governments, not to be chargeable with postage.

§ 36. In case any collector, comptroller, or other officer of H. M.'s customs, find any letter or letters superscribed as the letters of such owners, charterers, consignees, or shippers, exceeding the number or weight limited by this act, it shall be lawful for such collector, comproller, or other officer, to seize so many of the letters as shall reduce the remainder within the proper weight, and shall take the same to the nearest post-office, and the postmaster of the place shall pay to the officer delivering the same at the rate of 2*s*. 6*d*. for each letter or packet so seized. Owners' letters exceeding the weight allowed may be seized and carried to the post-office.

§ 37. The rates of postage for the conveyance of letters and packets by packet boats, or ships or vessels employed as packet boats, to any part of H. M.'s dominions and countries beyond the seas, excepting the *East Indies*, shall, with the consent of the lords commissioners of H. M's treasury, or any three of them, either be received at the post-office in *G. B.* upon forwarding the same, or by the deputy or deputies of the postmaster-general upon their delivery. Rates of postage for conveyance of letters to places beyond the seas, (except to India,) may be received at the post-office.

§ 38. It shall be lawful for the collector, comptroller, or other officer of H. M.'s customs, at any port or place, and he is hereby authorised to require a declaration from any commander of any ship or vessel sailing to the *Cape of Good Hope*, the Commanders of vessels having letters on board to make the following

55 G.3. c.153. *Mauritius*, or the *East Indies*, that he has not nor will take any letters on board his ship which have not been delivered to him by authority of the postmaster general, or which are not exempted from postage by this act; which declaration shall be in the form or to the effect following:

Declaration. *I A. B. commander of the* [state the name of the ship or vessel], *bound to* [state the place], *do, as required by law, solemnly declare that I have not to the best of my knowledge and belief on board my ship or vessel, nor will I take any letters which have not been delivered to me by authority of the postmaster general, or which are not exempted from postage.*

Penalty 50*l*. And in case any such commander shall make a false or untrue declaration he shall for every such offence forfeit 50*l*.

Bags of letters to be delivered on their arrival. § 39. On the arrival of any ship or vessel in any port where there is a post-office, or at the port of its destination, the master shall immediately send to the same all the bags, packages, or parcels of letters, and all other letters on board his ship, and shall, to the utmost of his power, procure all his crew and passengers to send any letters which may be in their possession, except such letters as are exempted by this act; and the master shall at the same time, or at the port or place where the ship or vessel shall report, sign a declaration in the presence of the person authorised by the postmaster general at the port or place, who shall also sign the same: which declaration shall be in the form or to the effect following; that is to say,

Declaration on delivery of letters. *I A. B. commander of the* [state the name of the ship or vessel], *arrived from* [state the place], *do, as required by law, solemnly declare, that I have, to the best of my knowledge and belief, delivered or caused to be delivered at the post-office at* [state the place], *every letter, bag, packet, or parcel of letters that were on board the* [state the name of the ship], *except such letters as are exempted by this act.*

And until such declaration shall be made and produced to the collector, comptroller, or principal officer of the customs, he or they shall not permit such ship or vessel to report.

Penalty on refusing to make declaration 50*l*. § 40. If any master of any ship or vessel shall wilfully refuse or neglect to make the several declarations by this act required, or to produce the last-mentioned declaration, he shall forfeit for every such offence, 50*l*.

Penalty on persons permitting vessels to sail until regulations complied with 200*l*. § 41. If any collector, comptroller, or principal officer, hereby required to prohibit any ship or vessel reporting until the requisites of this act shall be complied with, shall permit such ship or vessel to report, such collector, comptroller, or officer, so permitting such ship or vessel to report, shall forfeit 200*l*.

Officers to search packages. § 42. It shall be lawful for such collector, comptroller, or officer, at any port or place whatsoever, who, in the due execution of his duty as a revenue officer, shall discover any letters or packets on board any vessel in any port or place whatsoever, contrary to the provisions of this act, to seize and take all such letters and packets, and to forward the same to the postmaster general or his deputy, at the port or place; and the officer seizing and sending the same shall be entitled to one moiety of the penalty

which may be recovered for any such offence; and in all cases of such seizure the proof shall lie on the person in whose possession or baggage the letters or packets shall be found that the provisions of this act have been complied with. 55 G. 3. c. 153.

§ 43. In case any bags, packages, or parcels of letters shall be brought by any ship of war, the commander thereof shall cause the same and all letters which may be on board (except the public dispatches of government) to be immediately sent to the post-office, at the first port where he shall arrive; and such commander shall, for all such letters, be entitled to receive the same allowances as are payable to masters of ships or vessels. Commanders of ships of war to send letters to the post-office.

§ 44. In case the master of any ship or vessel, or the commander of any ship of war, shall, upon delivering his bags, packages, or parcels of letters, be prevented from receiving the money to which he shall be entitled, such master or commander shall nevertheless be paid the same, by the order of the postmaster general, at such other places as may be most convenient. Money due to masters of vessels to be paid by postmaster general.

§ 45. The rates of postage herein-before mentioned for the conveyance of letters and packets by the said packet boats, ships, or vessels from any port in *G. B.* to any port in the *East Indies*, shall be received by the deputies of the postmaster general, upon their delivery in *India*, and the rates of postage for the conveyance of letters from any port or place in the *East Indies* to *G. B.*, shall be received at the option of the parties sending the same, or upon their delivery in *G. B.* or *Ireland*, by the deputies of the postmaster general in *India* upon forwarding the same. Postage to be paid on delivery.

§ 46. If, after the master of any vessel shall have delivered his letters at the post office of any port at which he may touch, prior to his arriving at that port where the ship or vessel is to report, any letter or packet not exempted by this act, shall be found on board his vessel, in his possession, or in the possession of any of his crew, or any passenger on board, every such person knowingly having such letter or packet in his possession or in his baggage, shall forfeit for every letter 5*l.* Penalty on persons having letters on board after delivery at the post-office.

§ 47. If any person shall falsely superscribe any letter as being the owner, charterer, or consignee of the vessel conveying the same, or the owner, shipper, or consignee of the goods shipped in the vessel, every such person shall forfeit 10*l.* Penalty on persons falsely superscribing letters as being ship-owners, &c.

§ 48. One moiety of the penalties hereby imposed shall be payable to the use of H. M., and the other moiety to any person who shall inform and sue for the same, to be recovered with full costs of suit, by action of debt, bill, plaint, or information, in any court of record in *G. B.*, or in the colony or place where the offence shall be committed, wherein no essoign or privilege, &c. shall be admitted. Penalties how to be recovered and applied.

§ 49. If at any time hereafter† the establishment of such vessels as aforesaid, a space of three calendar months shall have elapsed without any public mail having been dispatched from *G. B.* to the *Cape of Good Hope*, and the *Mauritius*, and the several presidencies of *Fort William*, *Fort St. George*, and *Bombay*, in the *East Indies*, it shall be lawful for any person to send, or take on board, and carry any letters or packets from *G. B.* to such of the said places to which no mail shall have been so dispatched during the time aforesaid, or from such of the places aforesaid from which no mail shall have been so dispatched to *G. B.* with- † *Sic.* After the establishment, if three months elapse without dispatching a public mail, any person may carry letters without being subject to the penalties of this act.

55 G. 3. c. 153. out being subject therefore to any of the penalties, &c. or restrictions in this act contained, until some public mail shall have been again dispatched from *G. B.* to such place, or from such place to *G. B.*

Not to extend to China letters. § 50. Nothing in this act contained shall extend to any letters or packets to or from *China*, but they may be sent as heretofore has been used.

No penalties unless the establishment of mails be carried into effect within six months. § 51. No person shall incur any of the penalties by this act imposed, so far as the same shall relate to letters to be sent to and from *India*, unless the provisions herein-before contained, as to establishing vessels for the conveyance of mails of letters to the *East Indies*, shall be carried into effect within six months from the passing of this act.

In actions brought for carrying letters contrary to the 9 An. c. 10. or 42 G. 3. c. 81. proof shall lie on the defendant. § 52. In any action against any person for collecting, carrying, conveying, delivering, or sending letters or packets, contrary to the provisions of stats. 9 *Ann. c.* 10. or 42 *G.* 3. *c.* 81. or of this act, the proof shall lie on the person against whom such action shall be brought, for delivering or sending letters or packets, that the same were delivered or sent according to the provisions of the said last-mentioned acts, or according to the provisions of this act.

Application of the rates. § 53. The monies to arise by the said several rates and duties, (except the monies which shall be necessary to defray such expences as shall be incurred in the management and collection of the same), shall be paid into the receipt of the exchequer at *Westminster*, and carried to the consolidated fund of *G. B.*

Limitation of actions. Treble costs. § 54. If any action shall be commenced against any person for any thing done in pursuance of this act, the same shall be commenced within twelve months; and the defendant may plead the general issue, and recover treble costs, &c.

59 G. 3. c. 111. By stat. 59 *G.* 3. *c.* 111. § 1. So much of stat. 55 *G.* 3. *c.* 153. as relates to postage from the *Cape of Good Hope*, *Ceylon*, the *Mauritius* and the *East Indies* is repealed.

Penalties. § 2. Any penalty incurred for any offence contrary to the said act, previously to this may be recovered.

The following rates of postage to be paid. § 3. It shall be lawful for the postmaster general, to take, for every letter or packet brought into *G. B.* by any ship or vessel arriving from *Ceylon*, the *Mauritius*, or any port or place within the limits of the charter of the united company of merchants of *England* trading to the *East Indies*, or from the *Cape of Good Hope*, the rates following, viz.

Rates for letters from India. For every such letter or packet, a sea postage of 4*d.*; provided the same shall not exceed the weight of three ounces:

And for every letter or packet exceeding the weight of three ounces, a sea postage of 1*s.* *per* ounce, in addition to any inland or internal postage which may arise upon the inland conveyance of such letters and packets.

And for the encouragement of the masters or commanders of such ships or vessels, it shall be lawful for the postmaster general to allow to every such commander or master the sum of 2*d.* a letter or packet, upon all such letters and packets as he shall deliver unto the deputies of the postmaster general, according to the directions hereinafter contained.

Letters may be forwarded to India. § 4. It shall be lawful for the postmaster general, and his deputies, to collect and receive letters and packets of letters directed to *Ceylon*, the *Mauritius*, or any port or place within the limits of the said U. C.'s charter, or to the *Cape of Good Hope*,

and to forward the same by any ships or vessels, and for the use of H. M., to take for every letter or packet the rates following, viz. 59 G. 3. c. 111.

For every such letter a sea postage of *2d.*; provided the same shall not exceed the weight of three ounces.

And for every letter or packet exceeding in weight three ounces, a sea postage at the rate of 1*s.* *per* ounce; any law, statute, usage, or custom to the contrary thereof notwithstanding. Rates for letters to India.

§ 5. It shall be lawful for the postmaster general, and his deputies, to receive newspapers or printed price currents, and also any printed paper liable to the stamp duties and duly stamped, for conveyance to such places; and also for the use of H. M., to take, for the conveyance of the same, 1*d.* for each packet not exceeding one ounce, and for each packet exceeding one ounce, at the rate of 1*d.* *per* ounce; provided the same be sent in covers open at the sides. Rates for newspapers, &c.

§ 6. Nothing herein contained shall oblige any person to send any letters or newspapers or printed prices current, or any other printed papers, to the *East Indies*, or to the islands of *Ceylon* or the *Mauritius*, or any port within the limits of the charter of the said U. C., or to the *Cape of Good Hope*, through the post-office, but it shall be lawful for all persons to send letters, &c. &c. and other printed papers to those places in any manner that they may find convenient. Letters, &c. may be forwarded in any other manner than through the post-office.

§ 7. The commanders of all ships or vessels bound to *Ceylon*, the *Mauritius*, or any port within the limits of the charter of the said U. C. or to the *Cape of Good Hope*, are required to receive on board any bags of letters and packets tendered to them for conveyance by the postmaster general, or his deputies, without any remuneration. Commanders of ships, &c. bound to the East Indies required to take bags.

§ 8. In case any such commander shall refuse to receive on board his ship any such bag or bags so tendered, or having received on board any such bags, shall wilfully neglect to deliver the same on his arrival at the port or place of his destination, then such commander shall forfeit 200*l.* Penalty on refusing to receive, or neglecting to deliver, 200*l.*

§ 9. It shall be lawful for the court of directors of the said U. C., or the secret committee appointed by the said court, to receive free from postage from *India*, any letter or packet relating entirely to the affairs of the company, and in like manner to send any such letters and packets; provided all letters so sent be superscribed by the chairman or deputy chairman, or secretary or assistant secretary. Court of directors, &c. may receive and send letters and packets to and from the governments in India, free of postage, &c.

§ 10. It shall be lawful for the court of directors, secret committee, and secretary or assistant secretary, to receive from any officer or agent abroad, any letters or packets entirely relating to the affairs of the said company, by ships in the service of the said company, without payment of any postage. and may receive the same from their agents free of postage.

§ 11. It shall be lawful for the commissioners for the affairs of *India*, and for the chairman and deputy-chairman of the *East India* company, to send and receive letters and packets to and from *Ceylon*, the *Mauritius*, &c. free of postage; provided that no such letter exceed three ounces. So as to commissioners for the affairs of India and chairman of the company; and

§ 12. Nothing in this act contained shall prevent such public officers as may now send and receive letters free, from sending and receiving letters and packets free from any postage directed to be paid by this act. public officers who now have the privilege;

59 G.3. c.111. Secretary of the board of controul.

§ 13. It shall be lawful for the secretary to the board of commissioners for the affairs of *India*, to send and receive letters free of postage, as the under-secretaries of state are authorised by law to do.

Letters from the governor of Ceylon, &c. to the agents of their governments, not chargeable.

§ 14. Nothing in this act shall charge postage on letters or packets addressed by the governors of H.M.'s settlements of *Ceylon*, the *Cape of Good Hope*, or the *Mauritius*, or by the secretaries of such governments, to the agents of those respective governments residing in *England*, or by such agents to such governors or secretaries: relating *bonâ fide* to the public service; such governor, secretary, or agent superscribing the same.

Directors may receive letters free of sea postage from India, by the ships of the company.

§ 15. It shall be lawful for the directors to receive letters and packets free from sea postage; provided the letters brought by one ship to be received by any such director, do not collectively exceed the weight of six ounces: and such persons as shall have been directors may continue to receive such letters free from postage for one year after they have ceased to be directors.

Owners may receive letters by their own vessels, free of sea postage;

§ 16. It shall be lawful for the owners, charterers, or consignees of vessels, resident in *G. B.* to receive their letters by their own vessels, from *Ceylon*, the *Mauritius*, or any port or place within the limits of the charter of the said U. C. or from the *Cape of Good Hope*, free from sea postage; provided they shall be described as such in the superscription, and that such letters brought by any one vessel to any one owner, charterer or consignee, shall not collectively exceed twenty ounces.

As also owners or consignees of goods.

§ 17. It shall be lawful for the owners or consignees of goods on board ships arriving from *Ceylon*, the *Mauritius*, or any port or place within the charter of the said U. C. or from the *Cape of Good Hope*, to receive letters free from sea postage by such ships; if described as such in the superscription; and provided it shall appear by the ship's manifest, that such persons actually have goods on board; and that the letters so brought, for any one such owner shall not collectively exceed six ounces.

Persons falsely superscribing.

§ 18. If any person shall falsely superscribe any letter, as being the owner, charterer, or consignee, every such person shall forfeit 10*l*.

Owners and consignees may obtain their letters from the master, before delivery at the post office.

§ 19. Such owners, charterers, consignees and shippers, may obtain such letters, from the master, before he shall make his delivery at the post-office as hereinafter directed; but within the limitation of weight and superscription.

Owners' letters exceeding the weight allowed, may be seized and carried to the post office.

§ 20. In case any officer of customs, shall find any letter, superscribed as the letters of such owners, charterers, consignees, or shippers, exceeding the weight limited by this act, it shall be lawful for such officer to seize so many of the letters as shall reduce the remainder within the proper weight, and he shall take the same to the nearest post-office; and the postmaster shall pay to the officer 6*d*. for each letter so seized.

Masters of vessels on arrival to collect, enclose, and seal letters, and deliver them at the first post-office, and make

§ 21. On the arrival of any ship or vessel off the coast of *G. B.* the master shall cause all letters on board (except such letters as may be obtained by such owners, charterers, consignees, and shippers and except letters and packets exceeding the weight of three ounces) to be collected, and enclosed in some bag, box, or other envelope, to be sealed with his seal, and to be addressed to any postmaster in *G. B.*, to be in readiness to send on shore

by his own boat or by the pilot boat, or any other safe opportunity, in order that the same may be delivered at the first regular post-office which can be communicated with, and be distributed from thence by the earliest inland posts; and shall likewise cause all letters exceeding three ounces (except such as may be obtained by owners, charterers, consignees, and shippers) to be collected and enclosed in some bag, box, or other envelope, to be sealed and addressed as aforesaid, and shall deliver the same at the regular port where the ship or vessel shall report, and shall at such port sign a declaration in the presence of the person authorised by the postmaster general, who shall also sign the same; which declaration shall be in the form or to the effect following; that is to say, 59 G.3. c.111. the following declaration.

I A. B. commander of the [state the name of the ship or vessel] *arrived from* [state the place], *do, as required by law, solemnly declare, that I have, to the best of my knowledge and belief, delivered, or caused to be delivered to the post-office, every letter, bag, package, or parcel of letters that were on board the*, [state the name of the ship] *except such letters as are exempted by law.*

And until such declaration shall be made and produced to the comptroller or principal officer of the customs, he or they shall not permit such ship or vessel to report.

§ 22. If any master of any ship or vessel shall refuse or neglect to make the said declaration, he shall forfeit 50*l.* Penalty on refusing to make declaration, 50*l.*

§ 23. If any collector, comptroller, or principal officer, shall permit such ship or vessel to report (until requisites of the act complied with,) he shall forfeit 50*l.* Penalty on persons permitting vessels to report, until regulations complied with, 50*l.*

§ 24. If, after the master shall have sent his letters to the post-office, any letter or packet not exempted shall be found on board, in his possession, or in the possession of any of the crew, or any passenger on board, every such person knowingly having such letter or packet in his possession or in his baggage, shall forfeit for every letter 5*l.* Penalty on persons having letters on board after delivery at the post-office, 5*l.* for every letter.

§ 25. It shall be lawful for such collector, comptroller, or other officer, who as a revenue officer shall discover any letters or packets on board any vessel contrary to this act, to seize all such letters and packets, and to forward the same to the postmaster general or his deputy at the port or place; and the officer seizing and sending the same shall be entitled to one moiety of the penalty which may be recovered for such offence; and in all cases of seizure, the proof that the provisions of this act have been complied with, shall lie on the person in possession. Officers to search packages.

§ 26. If any person to whom any letters may be entrusted by the master of any ship or vessel, sealed up as required by this act, shall break the seal, or in any manner open the same, or shall not duly deliver the same without wilful delay, he shall forfeit 20*l.* Penalty on breaking seals of box, bag, or packages of letters, 20*l.*

§ 27. In case any bags, packages, or parcels of letters shall be brought by any ship of war, the commander thereof shall cause the same, and all letters which may be on board (except the public dispatches of government), to be immediately sent to the post-office at the first port where he shall arrive; and such com- Commanders of ships of war to send letters to the post-office, for which an allowance shall be made.

59 G.3. c.111. mander shall be entitled to the same allowances as masters of other vessels.

Money due to masters of vessels to be paid by postmaster general.

§ 28. In case it shall happen from unforeseen circumstances, that the master or commander of any ship, shall upon delivering his bags, be prevented from receiving the money to which he shall be entitled, such master or commander shall nevertheless be paid the same, by order of the postmaster general, at such other places as may be convenient.

Penalties how to be recovered and applied.

§ 29. One moiety of the penalties shall be payable to H. M., and the other moiety to any person who shall sue for the same, to be recovered with full costs of suit, by action of debt, bill, plaint, or information, in any court of record in *G. B.*

In actions brought for carrying letters contrary to the provisions of 9 Ann. c. 10. or 42 G. 3. c. 81. Proof shall lie on the defendant.

§ 30. In any action against any person, for collecting, carrying, conveying, delivering, or sending letters or packets contrary to the provisions of stats. 9 *Ann. c.* 10. or 42 *G.* 3. *c.* 81. or contrary to this act, the proof that the letters or packets were collected, carried, conveyed, delivered, or sent, according to the provisions contained in the said acts, or according to this present act (as the case may require), shall lie on the person against whom such action shall be brought for delivering or sending the same.

Application of the rates.

§ 31. The monies to arise by the several rates aforesaid (except necessary expenses), shall be paid into the exchequer, and carried to the consolidated fund.

Limitation of actions.

Treble costs.

§ 32. If any action shall be commenced against any person for any thing done in pursuance of this act, the same shall be commenced within twelve months; and the defendant may plead the general issue, and recover treble costs.

Act not to extend to letters, &c. to or from China.

§ 33. Nothing in this act shall extend to any letters or packets to or from *China*; but they may be sent and carried as heretofore.

6. Postage relating to Soldiers or Seamen.

35 G. 3. c. 53. Letters from private soldiers, seamen, &c.

By stat. 35 *G.* 3. *c.* 53. § 7. No single letter sent by the post *from* any non-commissioned officer, seaman, or private, employed in the navy, army, artillery, or marines, shall, whilst so employed on H. M.'s service, be chargeable with a higher rate of postage than 1*d.* for the conveyance of each letter; to be paid at the time of putting it into the post; provided that there be written upon the same, in the hand-writing of and signed by the commanding officer for the time being, his name, and the ship, corps, regiment, or detachment to which such person belongs.

Or to such persons.

§ 8. And no single letter sent *to* any such person, upon his own private concerns only, shall be charged with more than 1*d.* postage to be paid upon delivery; but the same must be directed to such persons, and specify the ship, regiment, troop, corps, company, or detachment to which he belongs. And the deputy postmaster shall not deliver such letter to any person, except the person to whom the same shall be directed, or person appointed to receive the same by the commanding officer.

1 G. 3. U. K. c. 7. 5 G. 3. c. 11.

By stats. 41 *G.* 3. U. K. *c.* 7. § 10. and 45 *G.* 3. *c.* 11. § 3. nothing in these acts shall alter the rates affixed by stat. 35 *G.* 3. *c.* 53. § 7. 8.

The additional rates of stat. 52 *G.* 3. *c.* 88. not to increase or alter the amount or manner of charging the rates of postage (as regu-

lated by stat. 35 *G.* 3. *c.* 53.) upon single letters to be sent by the post by or to seamen or privates employed in H. M.'s navy, army, militia, fencible regiments, artillery, or marines upon their own private concerns only, whilst such seamen and privates shall be employed in the public service. 35 G. 3. c. 53.

By stat. 46 *G.* 3. *c.* 92. (*a*). § 5., the 8th § of stat. 35 *G.* 3. *c.* 53. is repealed. And by § 6. of that act, it is enacted, that seamen whilst actually employed in H. M.'s service may send single letters on their own private concerns only, at the rate of 1*d.* each, to be paid upon putting them into the post-office. Provided that the name of the writer and his class and description in the vessel to which he shall belong shall be superscribed; and also in the hand- 46 G. 3. c. 92.

(*a*) It having been found that the provisions of the statute for allowing soldiers to send and receive letters at a low rate of postage, are not yet perfectly understood, his Royal Highness the Commander in Chief has therefore been pleased to direct that the following instructions shall be communicated to the army: —

" *Letters from soldiers.* — Upon all single letters sent from soldiers, the name of the soldier, his rank (whether serjeant, corporal, drummer, trumpeter, fifer, or private, and the regiment, corps, or detachment to which he belongs), are to be superscribed; all such single letters to be indorsed by the officer in the actual command of the regiment, corps, or detachment, his name, rank, and the regiment, corps, or detachment, commanded by him, are to be written in his own hand-writing. It is to be understood, that this indulgence is limited to single letters only. One penny must be paid at the time the letter is put into the post-office, or such letter will be liable to the full rate of postage.

" The act of parliament alluded to directs, that if any officer having the command of a regiment, corps, or detachment, shall wilfully write his name on any letter which is not from a soldier, and upon private concerns only, such officer shall forfeit and pay the sum of 5*l.* that a similar penalty shall attach to any person who shall obtain the signature of the officer commanding, to letters not on private concerns of soldiers; and further, that if any officer, not having at the time the command of the regiment, corps, or detachment, shall write his name upon a soldier's letter, he shall forfeit the sum of 5*l.*

" *Letters to soldiers.* — In all cases of single letters addressed to soldiers, the rank, whether serjeant, corporal, trumpeter, drummer, fifer, or private, and the regiment, corps, or detachment, to which they belong, must be specified. One penny is to be paid by the writer or other person, on putting the letter into a post-office, the letter will otherwise be liable to the full rate of postage. The letter cannot be delivered to any person except the soldier to whom such letter is directed, or to some one appointed to receive the same by an authority in writing under the hand of an officer having the command of the regiment, corps, or detachment, to which such soldier belongs.

" The Commander in Chief is desirous that soldiers shall have the full benefit intended by the legislature, but in order to guard against any abuse of privilege, H. R. H. feels it necessary to repeat what was declared in the general orders of the 28th of February, 1814, and 14th of June, 1814, that the indulgence of conveyance of letters to non-commissioned officers and soldiers, free of expense, is applicable exclusively to letters intended for the persons to whom they are addressed, and that no explanation which may be offered for an abuse of this privilege, which is attached exclusively to the said non-commissioned officers and soldiers, will be deemed satisfactory, or will in the least degree exculpate any officer who may directly or indirectly aid, or connive at such deviation from the true intention and spirit in which this boon has been granted to soldiers, and that any non-commissioned officer or soldier who shall present to his officer a letter to be rendered free of postage, which is not his own, will be guilty of a fraud, for which it is H. R. H.'s express command that every offender shall be tried, and no alleviation of whatever punishment may be awarded must be expected.

" By command of H. R. H. the Commander in Chief,

" HARRY CALVERT, Adjutant-General."

" Horse-Guards, 28th March, 1817."

46 G.3. c.92. writing of and signed by the officer at the time commanding the vessel, his name, and that of the vessel.

And by § 7. Such seamen may receive such letters free of postage, provided that 1*d*. for each shall be paid upon putting the same into the post-office; and the name of the vessel to which they belong shall be superscribed; provided also that such letters shall be delivered only to the seamen to whom directed, or to persons appointed to receive them by writing under the hand of the commanding officer of the vessel; commissioned officers, or warrant officers, midshipmen, or masters' mates, not included in this section.

By § 8 & 9. The same provisions are extended to every serjeant, corporal, drummer, trumpeter, fifer, and private soldier in H. M.'s regular forces, militia, fencible regiments, artillery, or royal marines, within any part of H. M.'s dominions.

55 G.3. c.153. By stat. 55 *G*. 3. *c*. 153. § 25. The provisions of stat. 46 *G*. 3. *c*. 92. § 6. 7. & 8. are extended to every seaman in H. M.'s navy, and every serjeant, corporal, drummer, trumpeter, fifer and private soldier in the regular militia, fencible regiments, artillery, or royal marines, whilst actually employed in H. M.'s service in the *East Indies*, and to every seaman, serjeant, corporal, drummer, trumpeter, fifer, and private soldier in the service of the *East India* company whilst actually employed therein.

46 G.3. c.92. By stat. 46 *G*. 3. *c*. 92. § 10. § 8. & 9. of that act are not to extend to commissioned officers or warrant officers.

By § 11. Any such commander wilfully and knowingly writing his name upon any letter that is not from such seaman, &c. shall forfeit 5*l*.

And by § 12. A like penalty is imposed upon persons not being such commanders, writing their name upon any letter that it may be sent at a lower rate of postage than by law established.

And by § 13. A like penalty is imposed upon those who knowingly address a letter to any such seaman, &c. which shall be intended for another person, or concerning the affairs of another person, for the purpose of evading legal postage.

By § 14. If any shall procure any such seaman, &c. to obtain the signature of his commanding officer to any letter to be sent by post which shall not be on the private concerns of such seaman, &c.: or if any such seaman, &c. shall himself obtain such signature upon any letter not from such seaman, &c., and upon his own private concerns only, in order to avoid the payment of legal postage, he shall forfeit 5*l*.

By § 15. One moiety of the penalties imposed by this act to be to the use of H. M., and the other to him who informs and sues, and may be recovered before one or more justices of the peace for the county, city, riding, town, or place, where the offence shall be committed, either upon the party's voluntary confession, or the oath of one witness (which oath the said justice of the peace may impose,) and in default of payment the offender shall be committed to the house of correction for not exceeding one month, or until the penalty be sooner paid.

4 G. 4. c. 81. By stat. 4 G. 4. *c*. 81. § 73. after reciting stat. 46 *G*. 3. *c*. 92. § 7. 9. *supra*, and that it is expedient to extend its provisions to seamen in the navy and to non-commissioned officers and soldiers whilst actually employed in H. M.'s service in the *East Indies* and at the island of *St. Helena*, and also to the non-commissioned officers and sol-

diers actually employed in the service of the *East India* company, subject to such modifications as are herein-after contained; it is enacted, That from and after the passing of this act (*viz.* 18*th July*, 1823,) it shall be lawful to and for every seaman employed in H. M.'s navy, within any part of the *East Indies*, or at the island of *St. Helena*, and to and for every serjeant, corporal, drummer, trumpeter, fifer, and private soldier in H. M.'s regular forces, militia, fencible regiments, artillery or royal marines, whilst actually employed in H. M.'s service in the *East Indies*, or at the island of *St. Helena*, and also to and for every serjeant, &c. &c. in the service of the said company, and not otherwise, to receive single letters by the post, on his own private concerns only, free from all postage, except the sum of 1*d*. for each single letter, to be paid upon putting the same into any post office in *G. B.* or *Ireland*, provided the several regulations and restrictions contained in stat. 46 *G.* 3. *c.* 92. shall have been complied with, and likewise to send by the post, on his own private concerns alone, single letters upon payment, by the party receiving the same, of the sum of 2*d*. for the sea postage of each such letter, and of the aforesaid further sum of 1*d*. for the inland postage of each such letter; provided that if any such letter shall be delivered into one of H. M.'s post-offices in *G. B.* or *Ireland* free of all expences to H. M. or the revenue of the post-office. such letter shall be chargeable with the inland postage of 1*d*. as aforesaid, and to no other charge: provided also that the several regulations and restrictions contained in stat. 46 *G.* 3. *c.* 92. shall have been complied with.

4 G. 4. c. 81.

Seamen in H. M.'s navy in East Indies or at St. Helena, and non-commissioned officers and privates serving then either in H. M.'s forces or in E. I. C.'s service, may receive single letters postage free, except 1d. on putting in in G. B. or Ireland; and may send single letters on the receiver's paying 2d. sea, and 1d. inland postage, or 1d. postage if put into a post-office in G. B. or Ireland, free of expence to H. M.

§ II. Exemption from Postage, and Franking by Members of Parliament.

By stat. 24 *G.* 3. *sess.* 2. *c.* 37. § 7. and 42 *G.* 3. *c.* 63. § 2. No letter or packet shall be exempted from postage except such as shall be sent to or from the *king;* and such not exceeding one ounce, are exempted from postage, as shall be sent by any member of the two houses of parliament of the U. K. of *G. B.* and *Ireland* during the sitting of parliament, or within forty days before or after any summons or prorogation; and whereon the whole superscription shall be of the hand-writing of the member directing the same, and shall have his name indorsed thereon, together with the name of the post-town from which the same is intended to be sent, and the day, month, and year when put into the office, (the day of the month to be in words at length,) and the same shall be put into the office on the day of the date put upon such letter.

Letters sent to the king; or sent to or franked by members of parliament.

By stat. 42 *G.* 3. *c.* 63. § 1. No letter to any member of either house shall be exempted, unless directed to such member, at the place where he shall actually be at the time of the delivery thereof, or at his usual place of residence in *London*, or at the house of parliament, or the lobby of such house of which he is a member.

42 G. 3. c. 63.

§ 2. And no letter or packet directed by any such member shall be exempted from postage, unless such member whose name shall be indorsed thereon pursuant to the laws now in force, shall actually be in the post-town into the post-office of which every such letter or packet shall be put, or within the limits of the delivery of letters for such post-town, or within twenty miles of such post-town, on the day, or the day before the day, on which the same shall be put into the office.

The member to be within twenty miles of the place where the letter is put into the office.

42 G. 3. c. 63. § 1. No such member shall be allowed to send more than *ten* nor receive more than *fifteen* letters free from postage in one day.

Number in one day.

Letters exceeding the number. § 3. And when the number, not above one ounce each, sent or received by any such member in one day, shall exceed the number herein allowed, and the postage on any of them shall differ, then such letter or packet as shall be chargeable with the highest postage shall be included in the number exempted, in preference to those of a lower postage, and the remainder shall be chargeable as other letters.

Persons authorised officially to send and receive letters free. § 4. Provided, that the lord high treasurer or commissioners of the treasury, the secretaries to the treasury, the lord high admiral or commissioners of the admiralty, the secretaries to the admiralty, the secretaries of state, and their under-secretaries, the clerks of the privy council, secretary at war, and deputy, the postmaster-general and secretary, the postmaster-general for *Scotland* and secretary, the surveyors of the post-office, paymaster-general, commander-in-chief and secretary, adjutant-general, comptroller of army accounts, all within *G. B.*; the chief governor of *Ireland* and secretary, the secretary for *Ulster* and *Munster*, and secretary in *G. B.*, the under-secretary for the law department of the chief secretary's office, and under secretary and first clerk for the military department thereof, the lord high treasurer or commissioners of the treasury and secretary, the postmaster-general all within *Ireland*, may continue to send and receive letters free from postage as heretofore.

§ 5. And also the clerk of the parliaments, clerk assistant, reading clerk of the house of peers, and the clerk of the house of commons and deputy, the two clerks assistant, and chief clerk without doors of such house (who receives and pays the fees.)

§ 6. And also the treasurer of the navy, and inspector of seamen's wills (under stat. 26 *G.* 3. *c.* 63.) as before stat. 35 *G.* 3. *c.* 53.

46 G. 3. c. 142. By stat. 46 *G.* 3. *c.* 142. § 6. The surveyor-general of H. M.'s woods, &c. is also in like manner exempt from the duty of postage in respect to letters sent or received by him, as the officers mentioned in stats. 4 *G.* 3. *c.* 24. and 42 *G.* 3. *c.* 63.

4 G. 3. c. 24. By stat. 4 *G.* 3. *c.* 24. § 6. Also clerks in the offices of the secretaries of state and post-office, being thereunto licensed by the secretaries or postmaster-general respectively, may continue to frank votes and newspapers as heretofore hath been used; provided the same be sent without covers, or in covers open at the sides.

43 G. 3. c. 119. Also by stat. 43 *G.* 3. *c.* 119. § 19, 20. the privilege of franking is extended to the accountant of *Greenwich* chest.

42 G. 3. c. 63. Postmaster of Ireland may authorise two persons to send certain letters, &c. free of duty under certain regulations. By stat. 42 *G.* 3. *c.* 63. § 8. The postmaster-general of *Ireland* may authorise two persons to send letters and packets concerning the business of the post-office only free from postage, provided they subscribe an indorsement thereon, signifying that such letter or packet is upon H. M.'s service, and seal the same with the seal of office; and if any such person shall so indorse or subscribe such indorsement, or promise the sameto be made upon any letter or packet which does not really concern the business of the post-office, in respect of which he is authorised to make the same, he shall for the first offence forfeit *5l.* to be recovered and applied as by stat. 9 *Ann.* *c.* 10. § 19. (namely, by action in any court of record,) one moiety of such penalty to the crown, and the other moiety to the informer with costs; and for the second offence shall be dismissed from his office.

§ 9. In case any person entitled to send letters or packets free of postage, being by bodily infirmity disabled from writing the whole superscription, shall appoint some person on his behalf to sign his name upon and write the superscription of such letters and packets, and shall cause notice thereof in writing under his hand and seal, or the hand and seal of any person authorised by him to notify the same, such authority being to be attested by the signature of any witnesses present when it was given, and who shall subscribe such notice, to be transmitted to the postmaster-general, all such letters and packets so signed and superscribed by the person so authorised shall pass free from postage, and be proceeded with as in other cases of franks.

42 G. 3. c. 63. Persons entitled to frank may in case of infirmity authorise a person to write for him, under certain regulations.

But by § 10, 11. nothing herein shall extend to printed votes or proceedings in parliament, or printed newspapers sent without covers, or in covers open at the sides, signed on the outside by any member of parliament, or clerk of either house, or directed to a member or clerk at any place, whereof he shall have given notice to the postmaster-general, at *London* or *Dublin*. See also stats. 4 *G.* 3. *c.* 24. § 5. and 35 *G.* 3. *c.* 53. § 6.

Proceedings in parliament, and newspapers.

§ 12. And the postmaster-general in *England* and *Ireland* respectively, or any officer employed under him, may search any packet sent without a cover, or in a cover open at the sides, to discover whether any paper or thing be inclosed in such printed paper, and whether such newspapers have been duly stamped; and if any thing shall be found inclosed, or there shall be other writing than the superscription on such printed paper on the cover thereof, the whole packet shall be charged with treble postage; and if such newspaper be not stamped, it shall be stopped and sent to the stamp-office at *London* or *Dublin*, as the case may be.

Postmaster general may search certain packets for certain purposes.

§ 13. Provided, that any person may send printed votes, proceedings, in parliament, and printed newspapers, by the post to *Ireland*, at the rate of 1*d.* for each, and in like manner newspapers from *Ireland* to *England* and *Scotland* at the same rate; such votes, proceedings, and newspapers to be open at both ends; the said postage to be paid on putting the same into the post-office.

Votes, &c. may be sent to and from Ireland at 1d. each.

By stat. 54 *G.* 3. *c.* 169. § 17. It shall be lawful for every member of either house of parliament, to receive by the post any petition addressed to either house of parliament, free from the duty of postage, so as the same be sent in a cover open at the sides, and that the same shall not exceed the weight of six ounces.

54 G. 3. c. 169. Members to receive petitions to parliament free from postage.

By stat. 44 *G.* 3. *c.* 84. § 1., reciting the 42 *G.* 3. *c.* 63., and that the privilege of sending and receiving letters and packets free from the duty of postage, is not by the said act extended to the master-general of H. M.'s ordnance, or to either of his secretaries, to the secretary to the board of ordnance, to the inspector-general of fortifications, or to the quartermaster-general of H. M.'s forces, who, by virtue of their respective offices, necessarily send and receive many letters and packets relating to the public concerns of this kingdom; it is enacted, that from the passing of this act, (20th *July*, 1804), the master-general of H. M.'s ordnance, one of the secretaries to the said master-general, the secretary to the board of ordnance, the inspector-general of fortifications, and the quartermaster-general of H. M.'s forces, all for the time being, shall and may send and receive letters and packets free from the duty of postage, in the same manner and under such restrictions

44 G. 3. c. 84. Certain ordnance and other military officers may send and receive letters free from postage.

44 G.3. c.84. as the commander-in-chief of H. M.'s forces for the time being, and other officers of H. M.'s forces therein specified, are thereby permitted, in respect of their offices, to send and receive letters and packets free from the duty of postage.

The respective officers herein mentioned to appoint certain persons to indorse letters and packets to be sent free from their offices, &c.

§ 2. And the lieutenant-general and principal officers of H. M.'s ordnance, and adjutant-general of H. M.'s forces, and the quarter-master-general of H. M.'s forces for the time being, may respectively authorise and direct certain persons, not exceeding two in number, in their respective offices or departments; and the barrack-master-general of H. M.'s forces for the time being, may authorise and direct one person in his office or department (a list of whose names shall from time to time be transmitted to the general post-office in *London*), severally and respectively to make and subscribe an indorsement upon letters and packets, to be sent by the post free from their respective offices, which shall concern the public business of such offices or departments, signifying that such letters and packets are upon H. M.'s service, which letters and packets, being so subscribed, and sealed with the respective seals of the several offices above specified, for the time being, shall and may be sent and conveyed by the post free from the duty of postage.

Penalty for making indorsement on letters not concerning the business of the office.

§ 3. But if any person authorised to make and subscribe such indorsement shall knowingly make the same, or procure the same to be made, upon any letter or packet which does not really concern the business of the office or department to which he shall belong, he shall for the first offence forfeit 50*l*. to be recovered and applied in the manner directed by stat. 9 *Ann*. *c*. 10. with respect to the penalties thereby inflicted; and for the second offence he shall be dismissed from his office.

45 G.3. c.61. Privilege of franking extended to other public officers.

By stat. 46 *G*. 3. *c*.61. § 1. The privilege of sending and receiving letters and packets free of postage is extended to the lord high chancellor of *G*. *B*., the speaker of the house of commons, the first lord commissioner of H. M.'s treasury in *G*. *B*., the first lord commissioner of the admiralty, the chancellor of the exchequer in *G*. *B*., the chancellor of the exchequer in *Ireland*, the president of the committee of council appointed for the consideration of matters relating to trade and foreign plantations, and the assistant secretary to the treasury in *G*. *B*.

And by § 2. the lords commissioners of the treasury for the time being may by writing under their hand authorise that letters and packets directed by H. M.'s postmaster general, the secretary to the postmaster general, the secretaries to the treasury, and the assistant secretary to the treasury, may be sent free from postage, without the name of the post-town and the date of the day, month, and year superscribed thereon.

46 G. 3. c.90. And by stat. 48 G.3. *c*.90. it is enacted, that all letters and packets addressed to the commissioners for auditing the public accounts, and to the commissioners for the affairs of barracks, and also all letters, &c. sent by their secretaries, and in their absence by the chief clerk of such secretaries, on business relating to their respective offices, shall be sent free of postage; and all such letters and packets forwarded by the said secretaries or chief clerks, shall be under covers, having respectively printed thereon, '*pursuant to act of parliament, auditor's office*,' or '*pursuant to act of parliament, barrack office*.' And a secretary, or some chief clerk nominated by the commissioners in each office, shall write his name thereon.

By § 2. If the secretary or clerk send under any such cover any writing, paper, or parcel, not relating to such duties, he shall forfeit 100*l.* one moiety to him, suing for the same, the other to the king. 48 G. 3. c. 90.

By stat. 50 *G.* 3. *c.* 66. The judge advocate general, for the time being, may send and receive letters and packets free from the duty of postage, in such manner and under such restrictions as are specified or imposed in relation to other public offices, in and by stat. 42 *G.* 3. *c.* 63. 50 G. 3. c. 66. Judge advocate general.

By stat. 53 *G.* 3. *c.* 13. The assistant secretary of the postmaster general is permitted to frank. 53 G. 3. c. 13. Assistant secretary of postmaster general.

By stat. 5 *G.* 4. *c.* 20. § 11., from and after the passing of this act (12 *April* 1824) the president or first named commissioner appointed by or in pursuance of stat. 1 & 2 *G.* 4. *c.* 90. intituled, "*An Act to appoint commissioners for enquiring into the collection and management of the revenue in* Ireland, *and the several establishments connected therewith*," may send and receive letters and packets by the post free from the duty of postage, within the U. K. under the restrictions specified in stat. 46 *G.* 3. *c.* 61. 5 G. 4. c. 20. President of the commissioners of Irish revenue enquiry.

By stat. 42 *G.* 3. *c.* 63. § 14. If any person shall counterfeit the hand-writing of any person in the superscription, in order to avoid the payment of postage; or shall alter or cause to be altered the date upon such superscription, or write or send any letter the cover whereof shall be forged, counterfeited, or altered, knowing the same; he shall be guilty of felony, and transported for seven years. See also stat. 24 *G.* 3. *sess.* 2. *c.* 37. § 9., Vol. II. page 501. 42 G. 3. c. 63. Forging franks.

§ III. Duties upon Horses travelling Post, and letting the said duties to farm.

[4 G. 4. c. 62.]

(*a*) *Repeal of certain Acts by stat.* 4 G. 4. c. 62. [§ 1.]
(*b*) *Duties — Exemptions — Licences — Postmasters' Accounts, &c.*
(*c*) *Toll Gate Keepers.*
(*d*) *Penalty for forging Tickets.*
(*e*) *Duties and Penalties how to be received and applied.*
(*f*) *Power of Justices — Conviction, &c.*
(*g*) *Letting the said Duties to farm.*

(*a*) Repeal of certain Acts by stat. 4 G. 4. c. 62. § 1.

By stat. 4 *G.* 4. *c.* 62. intituled "*An Act to repeal the duties upon horses let to hire for the purpose of travelling in* G. B. *and to grant other duties in lieu thereof; and to provide for letting the same to farm.*"

§ 1. It is enacted, that from and after the 31st day of *January* 1824, so much of stat. 25 *G.* 3. *c.* 51. as relates to the duties on horses hired to be used in travelling post and by time: Recited acts, viz. 25 G. 3. c. 51.

27 G. 4. c. 26. And also stat. 27 G. 3. c. 26. to enable the commissioners of the treasury, to let to farm the duties, &c.:

44 G. 3. c. 98. And also so much of stat. 44 G. 3. c. 98. as relates to the duties on horses hired to be used in travelling in G. B.:

57 G. 3. c. 59. And also stat. 57 G. 3. c. 59. for letting to farm the post horse duties:

1 G. 4. c. 88. repealed. And also stat. 1 G. 4. c. 88. to continue stat. 57 G. 3. c. 59. until the 1st of *January* 1824:

Deception. And all the rates and duties, clauses, provisions, and regulations contained in any other acts, as far as the same relate to the said rates and duties shall cease, except as far as the said acts may have repealed any former acts, or any enactments therein relating to any penalties which have been or may be incurred under any of the said acts; which said rates, duties, and penalties shall be recoverable, and proceedings thereon instituted and carried on, in the same manner as if this act had not been made: provided always, that the several bonds given or which may hereafter be given, in pursuance of the said acts, shall continue in full force, with respect to all duties due and owing, or which may become due and owing by virtue of any of the said acts; and the several licences granted or which may hereafter be granted in pursuance of any of the said acts, shall continue and be in full force, for the periods for which the same have been or may be granted; and the several deputations and appointments which have been or may be made under any of the said acts, shall remain in full force until duly revoked or determined.

Bonds and licences to continue in force.

(b) Duties — Exemptions — Licences — Postmasters' Accounts, &c.

Duties.

[§ 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40.]

§ 2. By 4 G. 4. c. 62. It is enacted, that from and after the said 31st day of *January* 1824, there shall be collected and paid throughout the kingdom of G. B., unto and for the use of H. M. the several duties following; that is to say,

Licence. Every postmaster or other person in G. B., who shall let horses, mares, or geldings for hire (except as herein-after mentioned) shall pay annually the sum of 5*s*. for a licence authorising him, her, or them so to do:

And for and in respect of every horse, mare, or gelding let for hire by the mile (at the usual rate charged for horses travelling post at the place at which such horse, mare, or gelding shall be let for hire), the sum of 1½*d*. *for every mile* such horse, mare, or gelding shall be hired or used to travel or go:

And for every horse, mare or gelding let for hire, to go no greater distance than eight miles from the place of letting for hire every such horse, mare, or gelding, one-fifth part of the sum charged for such letting for hire, or the sum of 1*s*. 9*d*. for every horse, mare or gelding so let for hire.

And for every horse, mare, or gelding let for hire, to go no greater distance than eight miles from the place of letting for hire every such horse, mare, or gelding, where such horse, mare, or gelding shall not bring back any person or persons, and shall not

deviate from the usual line of road between the place of letting and the place or distance to which every such horse, mare, or gelding shall be hired to travel or go, the sum of 1*s.* for every such horse, mare, or gelding so let for hire as last aforesaid: — 4 G.4. c.62.

And for every horse, mare, or gelding let for hire or used for any period of time less than 28 successive days, or in any other manner than by the mile, or to go no greater distance than 8 miles, in either of the cases aforesaid one-fifth part of the sum charged on every such letting for hire or using, or the sum of 2*s.* 6*d.* for each day not exceeding three days, and the sum of 1*s.* 9*d.* for each day exceeding three days and not exceeding 13 days, and the sum of 1*s.* 3*d.* for each day exceeding 13 days and less than 28 days, during the time for which every such horse, mare or gelding shall be so let for hire or used:

And for every horse, mare or gelding let for hire or used for 28 successive days, or for any longer period of time, where any such horse, mare, or gelding shall be returned in a less period of time than 28 successive days, and not to be exchanged for another horse, mare, or gelding in continuation of the same hiring, one-fifth part of the sum received or agreed to be received for such letting for hire or using, for and in respect of every such horse, mare, or gelding, or the sum of 2*s.* 6*d.* for each day not exceeding three days, and the sum of 1*s.* 9*d.* for each day exceeding three days and not exceeding thirteen days, and the sum of 1*s.* 3*d.* for each day exceeding thirteen days and less than 21 days, during the time every such horse, mare or gelding shall have been under the direction of the person hiring the same, by virtue of such letting for hire.

§ 3. The duties granted by this act shall be deemed to attach and be payable upon or in respect of every horse, mare, or gelding let for hire or used as aforesaid, either as a saddle horse, or for drawing any carriage or vehicle conveying any person or persons, and upon or in respect of every horse, mare, or gelding used for drawing any mourning coach or hearse; but the said duties shall not be deemed to attach upon or be payable in respect of any horse, mare, or gelding used for the purpose of drawing any carriage or vehicle conveying passengers for hire at separate fares, as a public stage coach or carriage, and duly licensed by the commissioners of stamps in *G. B.*; nor shall the said duties attach upon or be payable in respect of any horse, mare, or gelding used in drawing any hackney coach or carriage duly licensed by the commissioners of hackney coaches, where the same shall be licensed to go no greater distance than ten miles from the cities of *London* or *Westminster*; nor shall the said duties be payable for or in respect of any horse, mare, or gelding used for drawing any mourning coach or hearse, where the same shall be used to go no greater distance than eight miles from *Temple Bar* in the city of *London*; nor shall the said duties be payable for or in respect of any horse, mare, or gelding which shall be used for drawing any cart or carriage kept or usually employed for the conveyance of fish.

On what horses, &c. duties are to be charged.

Exemptions.

§ 4. The said duties shall be under the care and management of the commissioners of stamps in *G. B.*; which said commissioners are empowered to appoint and employ such officers and persons for that purpose, and to allow such salaries and incidental charges as shall be necessary, &c.

4 G.4. c.62. *Duties to be under the management of the commissioners of stamps.*

Commissioners of stamps to grant licences and regulations as to the date and expiration of the licences.

§ 5. From and after the said 31st day of *January* 1824, any two or more of the said commissioners, or some person duly authorised by them, shall grant licences to any person or persons who shall apply for the same, to let any horses, mares, and geldings for hire as aforesaid; and all such licences which shall be granted between the 31st day of *January* and the 16th day of *March* in any year shall be dated on the 1st day of *February* in that year: and all such licences which shall be granted at any other time shall be dated on the day on which the same shall be granted; and all such licences respectively shall have effect and continue in force from the day of the date thereof until the 31st day of *January* following, both inclusive, and no longer: and no person or persons whatsoever required by this act to be licensed shall, unless he, she, or they shall have obtained a proper licence in that behalf, let any horse, mare, or gelding for hire to be used in any of the cases aforesaid, upon pain to forfeit for every horse, mare, or gelding so let out for hire as aforesaid the sum of 10*l.*: Provided always, that no such licence shall be granted to any person or persons applying for the same, until he, she, or they shall have entered into and given or renewed the security by bond, as by this act is directed and required.

Commissioners of stamps to deliver proper blank forms of tickets.

What tickets shall contain on lettings by the mile.

§ 6. The said commissioners or their collectors, shall supply all persons who shall be licensed to let horses, &c. for hire with proper tickets and certificates, and the toll-gate keepers with proper exchange and check tickets, and the tickets for and in respect of every horse, &c., or of any number of horses, &c. let for hire by the mile, for drawing any carriage or vehicle conveying any person or persons, shall be adapted for the insertion of the day of the month, the month and year, on which every such horse, &c. shall be let for hire, the christian and surname of the person letting, if not an innkeeper, or the name of his or her sign or description of house, if an innkeeper, and in either case the name of the place of his or her residence, and the number of horses, &c. the number of miles, the names of the town or place (and if to *London*, the name of the street, square, or place) to which every such horse, &c. shall be hired to go; and the tickets for every horse, &c. or of any number of horses, &c. let for hire for a day or a less period of time to be used within the distance of eight miles from the place of letting, for the purpose of drawing any carriage or vehicle conveying any person or persons, shall be adapted for the insertion of the day of the month and year, on which every such horse, &c. shall be hired, the christian and surname of the person or persons letting, if not an innkeeper, or the name of his or her sign or description of house, if an innkeeper, and in either case the name of the place of his or her residence, and the number of horses, &c. so let; and the tickets for any horse, &c., or any number of horses, &c. let for hire to go no greater distance than eight miles from the place of letting, where such horse, &c., horses, &c. shall not bring back any person or persons, and shall not deviate from the usual line of road between the place of letting and the place or distance to which every such horse, &c. shall be hired to travel, for the purpose of drawing any carriage or vehicle conveying any person, shall be adapted for the insertion of the day of the month, the month and year, on which every such horse, &c. shall be let,

What tickets shall contain on lettings of horses to be used within the distance of eight miles from the place of letting.

What tickets shall contain on horses let to go no greater distance than eight miles from the place of letting.

4 G. 4. c. 62.

the christian and surname of the person or persons letting, if not an innkeeper, or the name of his or her sign or description of house, if an innkeeper, and in either case the name of the place of his or her residence, the number of horses, &c. so let; and the tickets for every horse, &c., or of any number of horses, &c. let for hire for any period of time less than 28 successive days, and in any other manner than by the mile, or to go no greater distance than eight miles, in either of the cases aforesaid, for the purpose of drawing any carriage or vehicle conveying any person, &c., shall be adapted for the insertion of the day of the month, the month and year, on which every such horse, &c. shall be hired, the christian and surname of the person or persons letting, if not an innkeeper, or the name of his or her sign or description of house, if an innkeeper, and in either case the name of the place of his or her residence, the number of horses, and the day or number of days for which every such horse, &c. shall be let for hire, and and if such hiring shall be for any period of time exceeding one day, the name and place of residence of the person hiring such horse, &c., or horses, &c.; and the certificate for any horse, &c. or any number of horses let for hire for 28 successive days or more, for drawing any carriage or vehicle conveying any person, &c. shall be adapted for the insertion of the day of the month, and month and year, upon which the hiring shall commence, the christian and surname and residence of the person letting, the name and residence of the person hiring, the number of horses let for hire, and the number of days for which the same shall be so let for hire; and the ticket by this act directed to be given by the keeper of any toll-gate or bar, in exchange for the ticket issued for any horse or any number of horses let for hire for any period of time less than 28 successive days, and in any other manner than by the mile, shall be adapted for the insertion of the name of the county in which the toll-gate or bar at which such exchange ticket shall be given is situated, the name of such toll gate or bar, the day of the month, the month and year, upon which the hirings shall be or commence, the number of horses, the day or number of days, the names of the places from which and to which every such horse shall be hired to go, or to go to and return from, the number of miles, and the names and residences of the person or persons letting and hiring every such horse, as the said particulars or any of them shall be expressed in the original ticket; and the check ticket by this act directed to be given by any keeper of any toll-gate or bar in exchange for any certificate issued for any horse or horses, hired for 28 successive days, or more, shall be adapted for the insertion of the name of the county in which the toll-gate or bar at which such check ticket shall be given is situated, the name of such toll-gate or bar, the day of the month, the month and year, on which such hiring shall commence, the number of horses, the number of days, and the names and residences of the person or persons letting and hiring every such horse, as the said particulars shall be expressed in the original certificate.

What tickets shall contain on lettings for a day, or less period of time than twenty-eight days.

What tickets on shall contain lettings for twenty-eight successive days.

What exchange tickets shall specify.

What check tickets shall contain.

§ 7. And whereas there are many public roads on which there are no toll-gates or bars, so that the tickets or certificates directed to be issued by the several postmasters and othe persons cannot be received and filed, as directed by this act; it is enacted, That

4 G. 4. c. 62. *Commissioners of stamps may erect gates.*

it shall be lawful for the said commissioners of stamps to erect bars and gates across any public road, for the receipt of the tickets and certificates directed to be issued in pursuance of this act, and to place a proper person or persons thereat, who shall have the same power and authority to collect and receive such tickets or certificates, and shall be authorised to demand the money from the traveller or travellers, for not producing and showing such ticket or tickets, certificate or certificates, in like manner as the keepers of any toll-gates or bars are authorised by this act to collect, demand, and receive the same, and such person or persons shall be liable and subject to the same penalties for any thing done contrary to this act, as the keepers of toll-gates or bars are liable.

Commissioners of stamps to deliver accounts to the post-masters.

§ 8. The said commissioners, at the time of issuing any such licence as aforesaid, shall deliver or cause to be deliverd to every postmaster, or person to whom such licence shall be granted, printed or written papers, intituled *Stamp-office weekly accounts,* which shall be adapted for the insertion of the following particulars relating to the horses, which may be let for hire, *videlicet,* the day of the month, the month and the year, of such letting for hire, the names of the towns or places from which and to which, or from which and to which and back again, according as the hiring may be, the number of every carriage required by this act to be numbered, the christian and surname of every postillion or driver employed, the amount of the sum charged for or in respect of every letting for hire, the number of horses let, the number of days, and the number of miles for which such horses shall be let for hire, and the amount of the duty payable for and in respect of every such letting, as the case may require, according to the following or such other form as the said commissioners shall judge convenient for keeping such account:

STAMP OFFICE WEEKLY ACCOUNT.

Day of the Month.	Month and Year.	From what Place and to what Place and back if so hired.	Number of Carriage.	Christian and Surname of Postillion or Driver.	The Sum charged.	By Time.			By the mile.		DUTY.
						Number of Horses.	Number of Days.	Number of Miles.	Number of Horses.	Number of Miles.	
											£. s. d.

§ 9. No postmaster or other person whomsoever, licensed by authority of this act, shall by virtue of one licence keep more than one inn, house, or other place for letting horses for hire, but for each and every inn, house, or other place which any postmaster or other person shall keep for the purpose of letting horses for hire, a separate and distinct licence shall be taken out and paid for by such postmaster or other person, upon pain to forfeit for every inn, house or place, so kept by him, her, or them, at which any horse mare, or gelding shall be left for hire, and not named or described in any licence granted to him, her, or them as aforesaid, the sum of 20*l*.

4 G.4. c.62. No licensed postmaster to keep more than one house by virtue of one licence.

Penalty 20*l*.

§ 10. Every postmaster or other persons so licensed, shall cause the words *Licensed to let horses for hire* to be painted or written in legible characters, either on a sign hung out from or fixed upon some visible place in the front of his, her, or their house, stables, or out-offices, at the respective places at which he, she, or they may be licensed, to denote that such postmaster or other person is a letter of horses for hire: and if any postmaster or other person, so licensed, shall presume to let out for hire any horse, without hanging out or fixing such sign every such postmaster or other person so offending shall, for every such offence, forfeit the sum of 5*l*.

Licensed postmasters to have a sign in front of house.

Penalty 5*l*.

§ 11. Where any person or persons who shall be licensed, shall keep any carriage or carriages, to be furnished at the same time with any horse or horses by him, her, or them let for hire by the mile as aforesaid (except hearses and mourning coaches), he, she, or they shall, before such carriage or carriages shall be so furnished or used, cause the same to be numbered with different numbers, beginning with number one and proceeding upwards progressively to the highest number of carriages which he, she, or they shall so keep, and shall also mark or paint, or cause to be marked or painted, in one or more straight line or lines on the outside pannel of each door of every such carriage which shall have a door thereto, and on some conspicuous part of each of the outsides of every such carriage which shall not have a door thereto, his, her, or their christian and surname, and the name of the city, town, or place where he, she, or they shall keep such carriage or carriages, in large and legible characters, and figures of black or white, whichever shall most differ from the colour of the figures whereon the same shall be marked or painted, each letter to be at least one inch in length, and each figure at least one inch and an half in length, and both letters and figures to be of a proper breadth in proportion to the length thereof, and shall continue the same on every such carriage as long as such carriage shall be kept for the purpose aforesaid, varying the numbers on such carriage from time to time as occasion shall require, so as to make the same correspond with the actual number of such carriages which he, she, or they shall then keep; and if any person or persons so licensed as aforesaid shall neglect or omit to number, mark, or paint any such carriage in manner aforesaid, or shall mark or paint, or cause to be marked or painted thereon, any false or fictitious name or place of residence, or any higher number than the greatest number of such carriages which he, she, or they shall then keep, or shall keep two or more such carriages with the same number marked or painted thereon, or shall continue any number

Carriages kept to be let with horses to be numbered, and the name painted thereon.

4 G.4. c.62.

upon any such carriage after he, she, or they shall cease to keep any number of such carriages corresponding therewith, he, she, or they shall, for every such offence, forfeit the sum of 10*l.*

Penalty 10*l.*

Persons on receiving first licence to give security by bond, conditioned to account for the stamp office tickets, &c.

§ 12. Every postmaster or other person so licensed shall, at the time of receiving his first licence, give security by bond to H. M., in the sum of 50*l.*, with a condition that he will, whenever thereunto required, re-deliver, or cause to be re-delivered, all the stamp office tickets which he may have received, and that may remain unaccounted for by him, or that he will pay the value of such tickets, to be ascertained as herein mentioned; and that he will also deliver to the person or persons properly authorised by the said commissioners of stamps, the stamp office weekly accounts so delivered to such postmaster or other person, faithfully made out and signed as hereinafter directed, and make payment of all such sums of money as shall be due to H. M. according to the true intent and meaning of this act; and also that he shall and will truly and faithfully observe and perform all the directions, matters, and things herein contained, on his behalf to be observed and performed: Provided always, that every postmaster or other person so licensed is hereby required to renew from time to time such security by bond to H. M., conditioned as aforesaid, at the expiration of three years from the date of the first, or if more than one bond shall have been given, at the expiration of three years from the date of the last preceding bond, by another bond conditioned as aforesaid; and in case of the non-performance or breach of any such condition, or any part thereof, it shall be lawful for the said commissioners, or the persons so appointed by them, to cause every such bond to be prosecuted, and in case of judgment against the defendant, the said commissioners may, if they shall think fit, refuse to grant to such person any licence in future.

Collector to transmit bonds, and an account of persons licensed every three months.

§ 13. Every person appointed a collector under this act shall, at or before the expiration of every three months, transmit to the commissioners of stamps every bond given as a security to H. M., as aforesaid, which may have been taken from any postmaster or other person, conditioned as herein-before set forth, and shall also make out and deliver, within the time aforesaid, an account or list in writing of the licences granted by him, as such collector to any person or persons to let horses for hire, which list or account shall specify the christian and surname of the person or persons licensed, the place of residence, the names of the inn (if any), and the date of every such licence; and if any such collector shall neglect or refuse to transmit every such bond, account, or list, he shall forfeit the sum of 100*l.*

Penalty 100*l.*

Duty on appointments of collectors 1*l.* 15*s.* Postmasters bonds 10*s.*

§ 14. No deputation or commission to be hereafter granted, appointing any person to be a collector of the said duties on horses let for hire, shall be chargeable with any higher stamp duty than 1*l.* 15*s.*; and no bond by this act required to be given by any postmaster or other person, shall be charged or chargeable with any higher stamp duty than 10*s.*

Persons letting horses shall be chargeable with the duty.

§ 15. Every postmaster or other person letting any horse for hire shall be chargeable with the payment of the duty by this act imposed in respect of every such letting for hire, whether the person letting such horse shall have received such duty or not; and every postmaster or other person who shall receive the hire for any horse, shall be considered as the person to whom the duties

Postmasters, &c. who shall

shall be paid, and shall be chargeable with and accountable for the same, as if such postmaster or other person was the actual proprietor of such horses, although the same may belong to and be the property of some other licensed postmaster or other person; and where any postmaster or other person so licensed, at whose inn, house, or other place any person shall apply to change horses, if he cannot furnish horses to convey such person on his journey, when applied to for that purpose, such postmaster or other person shall, and he is hereby directed to issue, to any person requiring the same, a fresh ticket properly filled up, and to receive the duty due thereon, and to charge himself therewith in the same manner as if such horses had been hired from such postmaster or other person.

4 G. 4. c. 62.

receive the hire of any horse, shall be liable to duty.

Where postmasters, &c. cannot furnish horses to travellers to give a new ticket.

§. 16. If any person not being licensed to let horses for hire shall, after the said 31st day of *January*, 1824, let for hire any horse, &c. or horses, &c. as aforesaid, he or they shall be chargeable with and accountable for the duty in respect of every horse, &c. so let for hire, in the same manner as if he or they had obtained such licence, and had received such duty from the person or persons hiring such horse; and shall from time to time, upon a week's notice in writing for that purpose, given by any collector of the said duties for the county, district, or place where he or they shall so let any horse for hire, deliver to such collector, whenever requested, after the expiration of such notice, a true account in writing, signed by him or them, of every such horse, which he or they shall have let for hire, and shall not then have accounted for, and of the mode and manner in which every such horse shall have been let, and of the duty payable in respect thereof, in such and the same manner as is required to be done by persons licensed; and shall also verify such account by oath or affirmation (to be administered by such collector), in like manner as licensed persons are hereby required to do, and shall thereupon pay to such collector the amount of such duty or duties; and in case of any refusal or neglect so to do, then he or they shall forfeit the sum of 20*l*. for every default in not delivering such account, verified as aforesaid, and double the amount of the duty or duties which he or they shall be then chargeable with: Provided always, that where any such notice shall have been given, and request made for the delivery of such account, then upon the delivery of such account, and payment of the duty due thereon, and upon taking out such licence as ought to have been taken out by him or them, previously thereto, the person or persons so delivering such account shall be indemnified and discharged from any penalty which he or they may be then liable to, in consequence of having let for hire any horse, in the manner mentioned in such account, without licence.

Persons not licensed to be accountable for duties same as licensed persons.

Account to be delivered on a week's notice from the collector, verified on oath as to certain particulars.

Penalty 20*l*., and double the amount of duties.

Indemnification on accounting for the duties, and on taking out licence.

§ 17. No person hiring any horse shall be compelled to pay for a greater number of miles for the hire of such horse or horses than shall be expressed upon the ticket delivered to such person; and if any postmaster or other person so licensed shall insert in such ticket the name of any other town or place than the town or place to, or to and from which, the horse or horses shall be hired to go, or to go and return, or a less number of miles, every postmaster or other person so offending shall forfeit the sum of 10*l*.; and the said

No person shall pay for more miles than shall be expressed in the ticket.

Penalty on not filling up the ticket truly 10*l*.

4 G.4. c.62.

commissioners shall, if they think fit, after conviction, refuse to grant such offender any licence in future.

In case of death, &c. of licensed postmaster, the executor, &c. to be accountable for duties; but licence must be taken out within 30 days.

§ 18. If any postmaster or other person licensed to let horses for hire, shall die or become insolvent, it shall and may be lawful for his or her executors or administrators, assignees, or trustees, or other persons succeeding to or taking possession of such inn, house, or other place, to let horses for hire, until such time as such person shall procure such licence and give such security as hereinbefore directed, without being liable to the penalty hereinbefore imposed upon persons letting horses for hire without being licensed, provided that such licence be taken out within 30 days after the death or insolvency of such postmaster or other person; and such person or persons shall be subject to the same rules, regulations, and charges, and liable to account for and pay the duties hereby imposed, in like manner as such postmaster or other person.

Postmaster, &c. to deliver tickets properly filled up.

Penalty 10*l*.

§ 19. Every postmaster or other person who shall, from and after the said 31st day of *January*, 1824, let any horse or horses for hire, shall by himself or servants, previous to the using any such horse or horses, deliver or cause to be delivered to the person or persons hiring any such horse or horses, one or more ticket or tickets, properly filled up as to all the particulars before mentioned, which shall be applicable to the hiring of such horse; and every postmaster or other person who shall let for hire any horse or horses, for 28 successive days or more, shall, in like manner, deliver to the person hiring such horse or horses, one or more of the certificates before mentioned, properly filled up as to the several particulars before mentioned, of letting for hire; and if any postmaster or other person, under any pretence whatsoever, shall neglect or refuse to deliver to the person or persons hiring any such horse or horses, one or more of the tickets or certificates before directed, properly filled up as to the several particulars before mentioned, such postmaster or other person shall forfeit the sum of 10*l*.

When horses are given up within the period for which they were hired the check ticket shall be delivered up to the collector on penalty of 20*l*.

§ 20. From and after the said 31st day of *January* 1824, where any person so licensed shall let for hire any horse or horses for 28 successive days or more, and such horse or horses shall be given up and returned to the person letting the same, before the expiration of the time for which such horse or horses shall have been so let for hire, the person or persons so letting such horse or horses shall, at the time of receiving back such horse or horses, ask for and receive of and from the person or persons so returning or giving up such horse or horses, the check ticket which he or they shall have received in exchange for the original ticket or certificate delivered to him or them, on the letting for hire such horse or horses, and shall within three days after the return of such horse or horses, deliver up or transmit such check ticket to the collector of the duties, to whom he or they shall be bound to deliver his stamp-office weekly account; and if any person so licensed shall refuse or neglect to ask for such check ticket, or having received the same shall refuse or neglect to deliver it up or transmit the same to the said collector within the time aforesaid, he or they shall forfeit the sum of 20*l*.; and if he or they shall use any such check ticket, or permit the same to be used,

Penalty for using a check

4 G. 4. c. 62.

ticket improperly, 50l.

or give out the same to any person or persons for the purpose of being used to cover and protect any other letting for hire whatever from the duty hereby granted, he or they shall, for every such offence, forfeit the sum of 50*l.*

Travellers to demand and deliver tickets at the first toll gate.

§ 21. Every person hiring any horse, &c., before using the same shall receive of and from the person or persons letting the same, one or more of the tickets or certificates, properly filled up as to the several particulars before mentioned, which shall be applicable to the hiring of such horse, &c., and shall leave and deliver, or cause to be left and delivered, every such ticket or certificate with the keeper of any toll-gate or bar, at the first toll-gate or bar which the person hiring or using any such horse, &c. shall pass or go through, and shall ask for and receive of and from such keeper of any toll-gate or bar the necessary exchange or check ticket, containing the several particulars in that behalf hereinbefore mentioned, which shall be applicable to the hiring of any such horse, &c., which exchange or check ticket shall be produced and shewn by the person hiring or using any such horse, &c. at every toll-gate or bar through which he shall afterwards pass or go with such horse, &c. at any time within the period for which such horse, &c. shall have been let for hire as aforesaid.

Penalty on persons falsely alleging horses to be their own, 10*l.*

§ 22. If any person hiring or using any horse or horses, shall neglect or refuse to deliver, produce, or shew, at any toll-gate or bar, the ticket, exchange ticket, certificate, or check ticket, which he ought, according to this act, to deliver, produce, or shew at such toll-gate or bar, and shall falsely allege such horse or horses with which he shall pass such toll-gate or bar, to be his own horse or horses, and not a hired horse or horses, in order to avoid being stopped, or to avoid the payment of the sum which the keeper of any toll-gate or bar shall be entitled to demand, in default of such ticket, exchange ticket, certificate, or check ticket being delivered or shewn as aforesaid, every person so offending shall forfeit the sum of 10*l.*

Mode of calculating duty where specific sums are charged for the hire of horses, &c.

§ 29. And in calculating the amount of duty to be paid, when the same shall be one-fifth part of the sum charged for any letting for hire of any horse or horses, &c. such one-fifth part shall be calculated upon the whole sum charged by such postmaster or person for such horse or horses so let for hire, and of the carriage (if any) used therewith; and in calculating the amount of the duty to be paid no fractional part of any sum less than one penny shall be charged in respect of any part of the said duties; and the inn, house, or other place at which any person shall be licensed to let horses, shall be deemed to be the place of letting; and where any horse, &c. which shall have been let for hire for any period of time, and shall be retained beyond the expiration of the time without a new hiring, every such horse, &c. shall be deemed, so far as relate to the duties, to have been retained upon a hiring similar to that for which every such horse, &c. was originally let for hire.

Particulars to be inserted in stamp office weekly accounts:

In cases of lettings by the mile:

§ 30. And from and after the said 31st day of *January* 1824, all persons letting horses for hire, shall insert in their stamp office weekly account the several particulars following; (that is to say), whenever they shall let for hire by the mile any horse or horses, the day of the month, the month and year for which such horse or horses shall be let, the names of the towns or places from which

4 G. 4. c. 62.

and to which, or from and to which and back again, such horse or horses shall be hired to go, the number of every carriage which they shall furnish with any such horse or horses, (if by this act required to be numbered), the christian and surname of every postillion or driver employed therewith, the number of horses, &c. so let for hire, and also the amount of the duty payable for every such; and whenever such persons shall let for hire for a day or less period of time, to be used within the distance of eight miles from the place of letting for hire any horse, &c. for the purpose of drawing any carriage conveying any person, they shall insert in their stamp office weekly account, the several particulars following; (that is to say), the day of the month, the month and year on which such horse or horses shall be let for hire, the number of every carriage, (if by this act required to be numbered,) the christian and surname of every postillion or driver employed, the number of horses, &c. and the amount of the sum charged for of such letting for hire; and shall be accountable for one-fifth part of such sum of money so charged, or for the sum of 1*s.* 9*d.* for each horse, so let for hire; and shall enter in their stamp office weekly account such one-fifth part of such sum charged, or the sum of 1*s.* 9*d.* for each horse, as and for the duty payable; and whenever such persons shall let for hire any horse or horses, to go no greater distance than eight miles from the place of letting for hire, where such horse or horses shall not bring back any person or persons, and shall not deviate from the usual line of road between the place of letting, and the place to which every such horse shall be hired to go, for the purpose of drawing any carriage or vehicle conveying any person, they shall insert in their stamp office weekly account the several particulars following; (that is to say,) the day of the month, and month and year on which such horse or horses shall be so let for hire, the number of every carriage, (if by this act required to be numbered,) the christian and surname of every postillion or driver, the number of horses, and also the amount of the duty payable for every such letting; and whenever such persons letting horses for hire as aforesaid, shall let for hire for any period of time less than 28 successive days, and in any other manner than by the mile, or to go no greater distance than eight miles in either of the cases aforesaid, any horse or horses, they shall insert in their stamp office weekly account the several particulars following; (that is to say), the day of the month, the month and year, on which such horse or horses shall be let for hire, and from and to what place, or from and to what place and back again, such horse or horses shall be hired to go, the number of every carriage which shall be furnished therewith, (if by this act required to be numbered,) the christian and surname of every postillion or driver employed, the amount of the sum charged for the hire or use of such horse or horses, the time for which the same shall be let for hire or used, the number of horses so let for hire, and where the distance shall be ascertained, the number of miles which the same shall be hired to go, or to go and return; and in all cases the amount of the duty payable for every horse upon every letting for hire or using; and whenever such persons shall let for hire, for 28 successive days or more, any horse or horses as aforesaid, they shall insert in their stamp office weekly account the several particulars following; (that is to say), the number of horses, so

[Margin notes: In cases of lettings of horses to be used within the distance of eight miles from the place of letting: — In cases of lettings of horses to go no greater distance than eight miles from the place of letting: — In cases of lettings of horses for less than twenty-eight days: — In cases of lettings of horses for twenty-eight days and more.]

let for hire, the day of the month, the month and year, on which such hiring shall commence, the number of every carriage furnished therewith, (if by this act required to be numbered,) the christian and surname of every postillion or driver, the time for which the same shall be hired, and the name and place of abode of the person hiring the same; and they shall also insert in every such account a memorandum or notice of all horses which shall have been let for hire by them as aforesaid, for 28 successive days or more, and which since the date of his, her or their last account shall have been given up and returned to them by the hirer before the expiration of the time for which such horse or horses shall have been let for hire, and the day of the month on which the same shall have been so given up and returned, and shall be answerable and account for one-fifth part of the sum received or agreed to be received for such letting for every such horse, or the sum of 2*s*. 6*d*. for each day not exceeding three days, and the sum of 1*s*. 9*d*. for each day exceeding three days and not exceeding 13 days, and the sum of 1*s*. 3*d*. for each day exceeding 13 days, and less than 21 days, during the time every such horse shall have been under the direction of the person or persons hiring the same; and in case of any refusal or neglect of any person or persons letting any horse or horses, for hire as aforesaid, to insert in his, her, or their stamp office weekly account the particulars before mentioned, such person or persons shall for each and every such refusal or neglect forfeit and pay the sum of 20*l*. 4 G. 4. c. 62. Penalty 20*l*.

§ 31. From and after the said 31st day of *January* 1824, every person so licensed, who shall let for hire any horse or horses as aforesaid, shall enter or cause to be entered in his, her, or their stamp office weekly account the several particulars by this act required to be inserted therein, on the same or following day on which any such horse or horses, shall be so let for hire, or so given up and returned, and in default thereof, he, she, or they shall, for every such default, forfeit the sum of 40*s*. Entries to be made in account the day the horses are let or returned. Penalty 40*s*.

§ 32. The stamp office weekly account required to be kept by every postmaster or person licensed to let horses for hire, shall be open for the inspection and examination, at all seasonable times, of the said commissioners of stamps or any collector appointed by them; and if any postmaster or person as aforesaid shall refuse to permit the said commissioners or collector, at any seasonable time, to inspect his stamp office weekly account, such postmaster or person shall, for every such refusal, forfeit the sum of 10*l*. Stamp office account to be open for inspection of collector. Penalty 10*l*.

§ 33. And from and after the said 31st day of *January* 1824, every person licensed as aforesaid, residing in the city of *London* or liberty of *Westminster*, or within the distance of five miles from the head office of stamps, or within the bills of mortality, shall attend and deliver his stamp office weekly accounts, and pay the duties unto the commissioners of stamps, at the said head office, or to some collector authorized to receive the same, at such place and at such time as shall be appointed by a notice to be written or printed upon the blank forms of the stamp office weekly accounts, which shall from time to time be delivered to him by any authorized collector, for the purpose of making therein the entries required by this act, provided such place be not at a greater distance than two miles from the said head office; and When and where licensed persons should deliver account and pay duty.

4 G. 4. c. 62.

every person so to be licensed as aforesaid, not residing within five miles of the head office of stamps, or within the bills of mortality, shall attend and deliver his stamp office weekly accounts, and pay the duties unto the collector authorized to receive the same, at such place in the market town in which he shall reside, or in the nearest market town to his residence, and at such time as shall be appointed by a notice to be written or printed upon the blank forms of the stamp office weekly accounts, under the penalty of 10*l*. for every default, and double the amount of the duties.

Penalty for neglect in not delivering account and paying the duty 10*l*. and double the amount of the duty.

Postmaster to make oath of truth of account.

§ 34. And for the more effectually taking an account of the several duties imposed by this act, and preventing frauds therein; it is enacted, that from and after the said 31st day of *January* 1824, every postmaster or other person so licensed shall, at the times of delivering his account or accounts, make oath, or being one of the people called *Quakers*, make and subscribe a solemn affirmation before such commissioners or other person authorized as aforesaid, to the truth of the account then delivered, in the form following:

I A. B. *do swear* [or *affirm*, in the case of a Quaker], *that the Stamp Office weekly account* [or *accounts*] *now delivered by me, doth or do contain a just and true statement of the number of horses, mares, and geldings which have been let for hire by me, or my servants, or on my account and behalf, from the* ——— *day of* ——— *to the* ——— *day of* ———, *both inclusive, together with the manner in which such horses, mares, and geldings have been so let for hire as aforesaid, and also the full amount of the duty due and payable by me, or for which I am chargeable or accountable, for or in respect of every such horse, mare, or gelding so let for hire by me, or on my account as aforesaid, during the time aforesaid; all which said statements, matters and things, and all the other particulars contained in the said account or accounts, so far as regards myself and my own acts, are true, and so far as regards the acts of my servants, or of any other person or persons on my behalf, are true to the best of my knowledge and belief.*

So help me God.

Which said oath or affirmation shall be made and subscribed before the said commissioners or person authorised to receive such account or accounts, and to administer such oath or affirmation; and if any person making such oath or affirmation shall knowingly and wilfully make a false oath or affirmation, every person so offending, and being thereof lawfully convicted, shall be subject to the pains and penalties of wilful and corrupt perjury.

How lost tickets are to be paid for.

§ 35. And to prevent disputes as to the rate or value at which any of the tickets, delivered in pursuance of this act to postmasters, and which may remain unaccounted for on the 31st day of *January* in each year, shall be settled and accounted for; it is enacted, that every such ticket, which shall remain unaccounted for at the time aforesaid, shall be valued in account and paid for at the rate of 1*s*. for each horse, according to the number of horses expressed by figures on such ticket, and in the receipt given by such postmasters for the same.

Allowance to postmasters.

§ 36. The receiver general at the head office, and the said other collectors appointed to receive the duties hereby imposed, shall, at the time of settling the accounts of the several postmasters, allow

4 G. 4. c. 62.

to such postmasters, and deduct from their accounts, at the rate of 3*d.* in the pound out of the monies by them regularly accounted for, and paid to such receiver general or collector.

Horses used in coaches standing for hire, as hackney coaches, to pay a weekly duty.

§ 37. And for the convenience of persons residing in cities or populous towns (other than the cities of *London* and *Westminster*, or the borough of *Southwark*), letting for hire or using horses, for drawing coaches or other carriages, to be used as or in the nature of hackney coaches, and for rendering it unnecessary for such persons, in respect of horses let for hire or used as last aforesaid, to keep the weekly accounts hereby directed to be kept by persons letting horses for hire; it is enacted, that every person letting for hire or using any horse or horses for drawing any such coach or carriage, to be used as or in the nature of a hackney coach, any distance not exceeding five miles from the general post office of any city, town, or place, (such coach or carriage not being licensed as a carriage or vehicle conveying passengers for hire at separate fares, as a public stage coach or carriage,) shall be subject to the payment of the duties following; (that is to say), the sum of 5*s per* week for the horses let for hire, or used for drawing every such coach or carriage used as a hackney coach, when drawn by two horses; and the sum of 3*s. per* week for every horse let for hire, or used for drawing any such coach or carriage used as a hackney coach, when drawn by one horse, in lieu of the duties by this act chargeable upon horses let for hire: Provided always, that if any horse used for drawing any such coach or carriage, shall go a greater distance than five miles from any such general post office, the person letting for hire or using any such horse shall be subject to the same rules and regulations, and shall be chargeable with and accountable for the duties hereby generally imposed in respect of horses let for hire; and provided also, that the person letting for hire or using any horse for drawing any such coach or carriage, as a hackney coach, shall take out a licence expressly authorising him so to do, and shall cause every such coach or carriage to be numbered, and shall cause his christian and surname, and the name of the city, town or place to be painted and inscribed upon the outside pannel of each door, or upon some conspicuous part of such coach or carriage, in like manner as is herein-before directed in respect of carriages kept to be furnished or used with horses let for hire, under the like penalties as are hereby imposed upon persons neglecting to take out licences; or to number or cause to be numbered any coach or carriage kept to be furnished or used as aforesaid; or to paint or cause to be painted thereon the name of the person letting to hire or using any such horse, and the name of the city, town, or place where such coach or other carriage shall be kept; and every person letting or using such horse or horses for hire, for drawing such coach or carriage used as a hackney coach, shall attend and pay the said weekly duties at such times and places as persons licensed to let horses for hire are required by this act to do, and shall be subject to the like penalties for any neglect or default in attending and paying such duties; provided also, that nothing in this clause contained shall be construed to exempt from the payment of the general duties by this act imposed, any person letting horses for hire to draw any such coach or carriage, unless such coach or carriage shall be regularly and constantly used, and shall regularly

4 G.4. c.62.

and constantly ply in the public streets of some city or town as a hackney coach; and in all informations, actions, suits, or other proceedings in any of H. M.'s courts of record, or before any justice or justices of the peace, respecting the payment of any duty, or the recovery of any penalty in respect of any horse or horses used in drawing any such coach or carriage, the proof of such coach or carriage being a coach or carriage regularly and constantly used, and regularly and constantly plying in the public street as aforesaid, shall be upon the person letting such horse or horses; and provided also, that nothing in this act contained respecting the licences to be taken out by persons letting for hire, or using any horses for drawing any coaches or carriages to be used as hackney coaches, or respecting the painting the names or numbers upon such coaches, shall be construed to extend to coaches or carriages which are or hereafter may be subject to the provisions contained in any local act or acts of parliament.

Duties not exceeding 20*l.* may be recovered by distress.

§ 38. From and after the said 31st day of *January* 1824, where any person or persons liable to account for and pay any duties granted by this act, shall refuse or neglect to account for and pay the same to the collector for the county, district or place where he, she or they shall have let to hire such horses, and such duty shall not exceed the sum of 20*l.*, it shall be lawful for such collector, first obtaining a warrant for that purpose under the hand and seal or hands and seals of any one or more justices of the peace residing near the place where any such letting shall have been made (which justice or justices, on complaint, shall summon the party complained of, and the witnesses on either side, and examine into the matter of fact, and shall grant such warrant, on due proof being made of the sum due by the voluntary confession of the party, or by the oath of one or more witness or witnesses), to distrain such person by his goods and chattels, for the amount of such duties, and the distress taken to detain and keep for the space of five days, at the costs and charges of such person; and if he shall not within that time pay the amount of such duties, with the costs of such distress, then the goods and chattels so distrained shall be sold by such collector, who shall render the overplus (if any), after deducting the amount of such duties, and the costs of distress, to the person or persons distrained; and it shall be lawful for such collector, for the purpose of taking such distress, to break open in the day-time any house or place where any goods or chattels of such person or persons shall be, being thereunto authorised by such warrant as aforesaid, and calling to his assistance a constable, tithingman, or headborough, or other officer of the county, shire, stewartry, city, town or place where any refusal or resistance shall be made, which said officers are hereby required to aid and assist therein; and the leaving of the summons to appear before such justice or justices at the dwelling house or usual or last known place of abode of the party complained of, shall be deemed a good service thereof.

Service of summons.

Chaises and horses, &c. of postmasters to be liable to duty.

§ 39. It is enacted, that from and after the said 31st day of *January* 1824, all the horses, &c. kept for the purpose of being let for hire, and also all the coaches, chaises, and other carriages, harness, and other articles and things kept and used with such horses, &c. in the custody or possession of such postmaster or person letting horses for hire, or of any other person or persons for

the use and on the account of or in trust for such postmaster or other person shall be liable to and chargeable with the said duties in arrear, or which shall become due from time to time, from such postmaster or person for any horses, &c. which shall have been let for hire by him, or by any other person for his use or account. 4 G.4. c.62.

§ 40. Every postmaster or other person letting horses for hire, who shall be guilty of any wilful concealment, or of making any false account, or any other fraudulent contrivance, device, or pretence whatsoever, with an intent or design to defraud H. M. or any person or persons, of any of the duties imposed by this act, shall forfeit the sum of 50*l.*, and the said commissioners of stamps shall if they think fit, after judgment obtained, refuse to grant such offender any licence in future. **Penalty for wilful frauds by postmaster, &c. 50*l.***

(c) Toll-Gate Keepers.

[§ 23, 24, 25, 26, 27, 28.]

By stat. 4 *G*.4. *c*.62. § 23. The keeper of every toll-gate or bar in any city, town or other place through which any horse or horses, &c. let for hire for drawing any carriage or vehicle shall first pass or go, shall demand from the person or persons using such horse or horses the tickets or certificates issued for such horse or horses, &c.; and every such keeper of such toll-gate or bar shall deliver to the person or persons hiring or using any such horse or horses one or more exchange tickets or check tickets, properly filled up as to the particulars before mentioned, and shall receive and write his name upon and file all such tickets or certificates; **Toll-gate keepers to demand tickets and certificates, and give check tickets and certificates in exchange.** and every such keeper is hereby authorized and empowered to prevent any horse or horses let for hire in any of the ways aforesaid, passing or going through such toll-gate or bar, unless the person or persons hiring or using any such horse or horses shall first deliver or produce and shew to the keeper of such toll-gate or bar the necessary ticket, certificate, exchange ticket, or check ticket aforesaid, containing the particulars before mentioned, which shall be applicable to the hiring of such horse or horses, or shall pay or offer to pay to the keeper of such toll-gate or bar the sum of 1*s*. 9*d*. for every such horse, &c.; which sums the keeper of such toll gate or bar is authorized to demand and receive for his own use and benefit. **Persons not suffered to pass without producing the proper ticket, &c. or paying 1*s*. 9*d*. for every such horse, &c.**

§ 24. If any keeper of any toll-gate or bar shall neglect to demand, or shall refuse to receive from any person hiring or using any horse or horses any ticket or certificate hereby directed to be delivered to such keeper, or shall neglect or refuse to write his name, or to file the same when delivered, such keeper shall for every such offence forfeit the sum of 10*l*. **Penalty on toll-gate keeper for neglect. 10*l***

§ 25. If any keeper of any toll-gate or bar shall neglect or refuse to give any person or persons hiring or using any horse or horses, &c. the tickets directed to be given in exchange, or shall deliver an exchange or check ticket without having first received the necessary ticket or certificate containing the particulars before mentioned, applicable to the hiring of any horse or horses, &c. as aforesaid; or shall make, or permit or cause, or suffer to be made, any alteration whatever in any ticket hereby authorized to be received and filed by him or her, after any such ticket shall **Toll-gate keepers neglecting to give exchange and check tickets;**

4 G. 4. c. 62.

or allowing any person except collector to inspect tickets to forfeit 10*l.*

have come to his possession; or shall deliver any ticket directed to be received and filed by him, to any person other than the person duly authorized to receive the same; or shall permit or suffer any person to examine, see, or inspect any ticket directed to be by him received and filed as aforesaid, other than the person duly authorized to receive such ticket; or if any keeper of any toll-gate or bar shall demand or receive, or agree to accept any less sum of money than he is hereby authorized to demand and receive, and retain to his own use, every such keeper shall for every such offence forfeit the sum of 10*l.*

Toll-gate keepers within five miles to deliver tickets to the head office of stamps, and if beyond that distance the tickets shall be delivered to the collector.

Penalty on neglect of delivery 20*s.* for each ticket.

§ 26. The keeper of every toll-gate or bar within five miles from the head office of stamps in *Westminster* shall bring all the tickets and certificates required by him to be received to the said head office, or to such other place within the bills of mortality as the said commissioners shall appoint; and if such toll-gate or bar shall be beyond the distance of five miles from the head office, then the keeper shall bring or cause to be brought all the tickets and certificates by him received to such places and at such times as the collector appointed to collect such tickets and certificates shall require, provided such places shall not be at a greater distance than the nearest market town; and such keeper shall, upon demand made for that purpose, deliver up all such tickets and certificates to the collectors; and if any keeper of any toll-gate or bar shall neglect or refuse to attend with and deliver up all tickets or certificates, so received by him at the time and place before mentioned, every such keeper shall, for each ticket or certificate he shall so neglect or refuse to deliver up, forfeit the sum of 20*s.*

Allowance to toll-gate keepers.

§ 27. And for the encouragement of the keepers of the toll gates or bars in the execution of this act, and as a compensation for their trouble, it is enacted, That every keeper shall be authorized to demand and receive, from the collector or other person appointed to get in such tickets, and to whom such keeper shall deliver such tickets, the sum of one farthing for each horse specified in any ticket; and also the sum of one farthing for each such horse for every day more than one and less than 28 successive days in such tickets mentioned; and such collector or other person is hereby authorized to pay and allow the same accordingly, which allowance shall be over and above the allowance or privilege hereby given to such keepers of any toll-gate or bar of retaining the money by him or them collected from such persons who shall not, pursuant to this act, deliver, produce, or shew the ticket, exchange ticket, certificate, or check ticket, as is before directed.

Collector or other person authorized, may attend at any toll-gates, and receive and examine tickets.

Toll-gate keeper obstructing, &c. to forfeit 20*l.*

§ 28. And it shall be lawful for any collector, or other person duly authorized as aforesaid, from time to time to enter into and remain in any toll-house or other place at the gate or bar of which any toll is payable, for the purpose of examining and receiving the tickets and certificates directed to be delivered; and if any keeper of any toll-gate or bar, or any other person, shall refuse to permit any collector, or other person authorized as aforesaid, from time to time to enter into and remain in any such toll-house or other place, or to examine and receive such tickets or certificates, or shall obstruct, hinder, or molest such collector or person so authorised; or if any keeper of any toll-gate or bar, or any

other person, shall in any way hinder, molest, interrupt, or disturb any such collector, or other person, in the reasonable use of such toll-house or other place, every keeper, and every person aiding and assisting such keeper, offending in any of the cases aforesaid, shall forfeit the sum of 20*l.* 4 G. 4. c. 62.

(*d*) Penalty for Forging Tickets.

[§ 41.]

By stat. 4 *G.* 4. *c.* 62. § 41. If any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or wilfully aid or assist in the false making, forging or counterfeiting, any ticket or certificate by this act authorized or directed to be used, with an intent to defraud H. M., or any person or persons of any of the duties, or shall utter or publish as true any false, forged, or counterfeited ticket or certificate, with an intent to defraud H. M., or any person or persons, of any of the said duties, every person so offending shall forfeit the sum of 50*l.* Penalty for forging tickets, 50*l.*

(*e*) Duties and Penalties, how to be recovered and applied.

[§ 42, 43. 47.]

By stat. 4 *G.* 4. *c.* 62. § 42. In all actions, bills, plaints, informations and proceedings in the name of H. M., or in the name of any other person or persons, for the recovery of any of the duties, debts, or penalties granted or imposed, due or payable under this act, it shall be lawful for H. M., or any other person or persons suing or prosecuting for the same, to recover such duties, debts and penalties, with full costs of suit, and all other reasonable charges and expences attending the same. Duties and penalties to be recovered, with costs.

§ 43. Any pecuniary penalty, which shall amount to the sum of 10*l.* or more, shall or may be sued for in any court at *Westminster*, and in H. M.'s court of exchequer in *Scotland*, by action of debt, bill, plaint, or information. Where pecuniary penalties amounting to 10*l.* may be sued for.

§ 47. All pecuniary penalties imposed by this act, which shall be sued for within six calendar months, shall be distributed in manner following; that is to say, one moiety thereof to H. M., and the other moiety thereof, with full costs of suit, to the person or persons who shall inform and sue for the same; and it shall be lawful for any person to exhibit any information or complaint before any justice or other magistrate within the time aforesaid, against any person for the recovery of any fine, penalty, or forfeiture incurred by virtue of this act, which shall not amount to 50*l.*; and all such penalties as shall not be sued for, or respecting which no information shall have been exhibited within the time aforesaid, shall belong and be paid to H. M.; and the moiety of every such penalty payable to H. M. shall be paid into the hands of H. M.'s solicitor of stamps. Application of penalties.

(f) Power of Justices.—Conviction, &c.

[§ 44, 45, 46. See also § 38. *ante*, p. 790.]

By stat. 4 *G*, 4. *c*.62. § 44. It is enacted, that it shall be lawful for any justice of the peace, residing near the place where the offence shall be committed, to hear and determine any offence against this act which may subject any offender or offenders to any pecuniary penalty not amounting to 50*l*., which said justice of the peace is hereby authorised and required, upon any information exhibited or complaint made to him in that behalf, to summon the party accused, and also the witnesses on either side, and to examine into the matter of fact, and upon due proof made, either by the voluntary confession of the party accused, or by the oath of one or more witness or witnesses, to give judgment or sentence of dismissal, or for the penalty or forfeiture, as is hereby directed; and to award and issue out his warrant under his hand and seal for the levying any pecuniary penalty or forfeiture, penalties or forfeitures so adjudged, together with the costs and charges by this act directed to be allowed, on the goods of the offender or offenders, and to cause sale to be made thereof, in case they shall not be redeemed within six days, rendering to the party the overplus (if any); and where goods of such offender or offenders cannot be found sufficient to answer the penalty or penalties, costs and charges as aforesaid, to commit such offender or offenders to prison, there to remain for the space of six calendar months, unless such pecuniary penalty or penalties, costs and charges shall be sooner paid and satisfied; and if any person or persons shall find himself, herself, or themselves aggrieved by the judgment or sentence of dismissal of any such justice, then he, she, or they shall and may (upon giving security to the amount of the penalty or penalties sought to be recovered, together with such costs and charges as shall be awarded by such justice, in case judgment or sentence of dismissal shall be affirmed), appeal to the justices of the peace at the next general quarter sessions for the county, riding, or place, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same; and in case the judgment or sentence of dismissal of such justice shall be affirmed, it shall be lawful for such justices to award the person or persons so appealing to pay such costs occasioned by such appeal as to such justices shall seem meet: Provided always, that if the next general quarter sessions of the peace shall fall within six days after such judgment or sentence of dismissal, it shall and may be lawful for the person or persons so finding himself, herself, or themselves aggrieved as aforesaid, if he, she, or they shall think fit, giving such security as aforesaid, to appeal to the next subsequent quarter sessions, and that no such proceedings so to be had or taken, shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process, into any of H. M.'s courts of record at *Westminster*, or elsewhere in *England* or *Wales*, nor shall any such proceeding before such justice be taken or removed by a *certiorari*, suspension, advocation, or reduction, or by any other writ, process, or proceeding.

4 G.4. c.62. Power of justices.

§ 45. If any person shall be summoned as a witness to give evidence before any justice or justices of the peace, touching any of the matters relating to this act, either on the part of the prosecution, or of the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his or her neglect or refusal, to be allowed by such justice or justices of the peace, or appearing shall refuse to be examined on oath, and give evidence before such justice or justices of the peace before whom the prosecution shall be depending, every person so summoned, and so neglecting or refusing as aforesaid, shall forfeit for every such neglect or refusal the sum of 5*l.* 4 G.4. c.62. Penalty for witnesses not attending, 5*l.*

§ 46. A conviction, or a judgment, or a sentence of dismissal, in the form and to the effect following, (*mutatis mutandis*) shall be good and effectual, to all intents and purposes whatsoever, without stating the case, or the facts or evidence in any particular manner; (that is to say), Conviction.

BE it remembered, That on the ——— *day of* ———, *in the year of our Lord* ——— ———, *at* ———, *in the* ——— *of* ———, A. B. *came before me,* C. D., *one of his majesty's justices of the peace for the said* ———, *residing near the place where the offence was committed, and informed me that* E. F., *of* ——— *on the* ——— *day of* ——— *at* ——— *in the said* ———, *did* [here set forth the fact for which the information is laid]; *whereupon the said* E. F., *after being duly summoned to answer the said charge, appeared before me on the* ——— *day of* ——— *at* ——— *in the said* ———, *and having heard the charge contained in the said information, declared he was guilty of the said offence;* [or (as the case may happen to be), *did not appear before me pursuant to the said summons* [or, *did neglect or refuse to make any defence against the said charge*]; *but the same being fully proved upon the oath of* G. H., *a credible witness;* (or, as the case may happen to be), *acknowledged and voluntarily confessed the same to be true; and it manifestly appearing to me that he the said* E. F. *is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid, and do declare and adjudge that he the said* E. F. *hath forfeited the sum of* ——— *of lawful money of* Great Britain *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided;* [or, after stating the summons and non-appearance of the said defendant, or, the appearance of the said defendant, and that he was not guilty of the said offence, as the case may be], *and it manifestly appearing to me that the said* E. F. *is not guilty of the said offence charged upon him by the said information, I do therefore dismiss the said complaint or information. Given under my hand and seal, the* ——— *day of* ———.

Provided nevertheless, that it shall be lawful for the said justice, where he shall see cause, to mitigate and lessen any such penalty or penalties as he shall think fit or reasonable (costs and charges of the officers and informers, as well in making the discovery as in prosecuting the same, being always allowed over and above such mitigation), and so as such mitigation do not reduce such Mitigation of penalties.

4 G.4. c.62. penalties to less than one-fourth part of the penalty or penalties incurred over and above the said costs and charges.

(g) Letting the said Duties to Farm.

[§ 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65.]

Duties may be let to farm.

By stat. 4 *G.*4. *c.*62. § 48. It is enacted, that from and after the passing of this act it shall be lawful for the commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, or any three or more of them, from time to time, as it shall be necessary, either by himself or themselves, or by the commissioners of stamps, to let to farm the said duties hereby granted to such person or persons as shall be willing to farm the same, in separate divisions or districts, according to the regulations herein-after mentioned: Provided always, that it shall not be lawful to let to farm the said duties, or any part thereof, at any one time, for a longer period or term than three years from the day on which any such letting to farm shall commence and take effect.

Notice of letting to be inserted in gazette.

§ 49. One month's notice at least shall be given by the said lord high treasurer or commissioners of the treasury, or commissioners of stamps, in the *London Gazette*, of the time and place of letting the said duties, specifying the divisions or districts within which it is intended to let, and also the office at which proposals shall be delivered.

Proposals to be delivered three day previous to letting.

§ 50. No such proposals shall be proceeded upon, unless the same be signed by and in the proper names of the parties proposing to become bidders, and specifying the place of their abode, and delivered at least three days previous to the day mentioned in the *London Gazette*.

Mode of proceeding in putting up duties.

§ 51. The biddings shall be conducted under such regulations as shall be established by the said lord high treasurer, or commissioners of the treasury, or by the said commissioners of stamps, or the major part of them; and the person or persons who shall be the highest bidder or bidders shall be the farmer or renter, farmers or renters of the said duties, or such part thereof as shall be then put up to farm, for such term, not exceeding three years, as may be determined on, and as shall be inserted in the *London Gazette*; and shall forthwith execute a contract, and give security by bond to H. M., with three or more securities, for payment to H. M. of the money or yearly rent so contracted for, to be paid into the hands of the receiver general of H. M.'s stamp duties, at the head office of stamps, in equal portions, by eight several payments in the year, on the days to be fixed before any such letting to farm.

Deposit to be made by persons farming duties.

§ 52. It shall be lawful for the said commissioners of the treasury, or the said commissioners of stamps, to appoint the time for making a deposit, and the amount thereof, on account of the rent to be paid by the person or persons who shall be the best bidder or bidders; and in case any such person or persons shall fail to make such deposit at the time appointed, or shall fail to execute a proper contract in writing, and to give security for the payment of the rent and the due performance of such contract within the time to be appointed, then it shall be lawful for the said commissioners of the treasury, or the said commissioners of stamps, to declare the bidding and contract null

and void, and his or their deposit, if made, to be forfeited, and to cause the duties to be again put up to be let to farm, pursuant to this act, and so from time to time. 4 G.4. c.62.

§ 53. In case any of the said duties to arise in any district shall not be let to farm at the time mentioned in such advertisement, it shall be lawful for the said lord high treasurer, or the commissioners of H. M.'s treasury, or the commissioners of stamps, to appoint such future day or days as they shall judge proper, for letting the said duties, as hereinbefore directed, or to receive proposals, for farming such duties, and to let the same to farm by private contract for any period of time not exceeding three years: Provided always, that no contract for letting the duties to farm shall be made with any person or persons licensed to let horses for hire, nor to any one for his or their use, or on his or their behalf, or so as that he or they shall have any interest therein, or benefit therefrom, but the same (if so made) shall be utterly null and void; and if any such contract shall be assigned to any such person or persons, or to any other person or persons for his or their use, so that he or they shall have any interest therein or benefit therefrom, such assignment shall be also utterly null and void.

If duties not let at the time fixed, may be put up again.

Duties not to be farmed by any persons licensed to let horses.

§ 54. And to prevent disputes concerning the said duties hereby granted, in cases where the same may be collected in one district, division or collection, and the tickets may be delivered in another district, division or collection; it is enacted, that the said duties shall belong, and the tickets issued thereupon shall be delivered and accounted for, to the person or persons who shall be the farmer or farmers of the several duties arising within the district, division, or collection within which the inn, house, or other place at which the person or persons letting any horse or horses for hire shall be licensed is situated, and the keeper of every toll-gate or bar, at whose gate or bar such ticket shall be delivered, shall deliver the same to the farmer or farmers of the said duties arising within such district, division, or collection, at the time and in the manner such tickets are by this act directed to be delivered to the several collectors.

Duties to belong to district where tickets are issued.

§ 55. No person farming the said duties, or any part thereof, or appointed a collector thereof, shall in pursuance of such appointment be disqualified from voting at any election of members to serve in parliament.

Farmers of duties may vote for members.

§ 56. It shall be lawful for the commissioners of stamps from time to time as occasion shall require, to depute and appoint not only the persons who shall become farmers or lessees of the said duties, and their executors, administrators, and assigns, but also any other person or persons, at the request and upon the nomination and for the use of such farmers or lessees, or their executors, administrators, or assigns, to be collectors of the said duties within the respective districts, with full powers to grant the necessary licences to persons within the districts, for letting out horses for hire, and to take securities by bond from the person or persons to be licensed, in the name of H. M., with such conditions as are required by this act, and to receive the stamp office weekly accounts relating to the said duties, and the money due thereon, and to administer the oath or affirmation before required to be made as to the truth of the accounts, and generally to execute and do all other things touching the collecting, managing, and

Commissioners to depute farmers and collectors.

enforcing the payment of the said duties within their respective districts.

4 G.4. c. 62. Farmers may vary account, and indorse tickets.

§ 57. It shall be lawful for the person or persons so farming the said duties, with the consent of the commissioners of stamps, to vary the mode of keeping the weekly account in such manner as they shall judge most convenient for keeping the said accounts; and such person or persons so farming the said duties shall also be at liberty, by an indorsement or on the face of the tickets or certificates to be delivered by them to the licensed persons, to add the name or number of the district.

Bonds from innkeepers to be taken in the name of his majesty.

§ 58. All securities, bonds or obligations taken by the person or persons farming the said duties, from such postmasters, innkeepers or other licensed persons under this act, shall be taken in the name of H. M., his heirs and successors, and shall be prosecuted in the name of H. M., with the consent of H. M.'s attorney general in *England*, or lord advocate in *Scotland*.

No action shall be commenced until after fourteen days notice shall be given to the person incurring the penalty.

§ 59. From and after the said 31st day of *January*, 1824, no person or persons shall commence any action or suit in any court of record for the recovery of any penalty under this act, until the expiration of 14 days after such person shall have delivered or caused to be delivered to the person or persons incurring such penalty, or left for him or them, at his or their dwelling house, or usual or last place of abode, a printed or written notice of the intention of such person to apply to the commissioners of stamps in *G. B.* for leave to commence such action, and which notice shall state the offence, the day of committing the same, and the amount of each penalty intended to be recovered; and it shall not be lawful for such person, at the trial, to give in evidence any matter not specified and set forth in such notice.

Consent of commissioners to sue for penalty.

§ 60. Provided always, That it shall not be lawful for any farmer of any of the said duties, or for any other person, to prosecute for any such pecuniary penalty in any court of record, without having first obtained the consent in writing of the commissioners of stamps, or two of them, nor unless the suit or prosecution shall be carried on by the solicitor of stamps, or of some other solicitor or attorney to be approved of by the said commissioners or any two of them; and it shall be lawful for the said commissioners, or any two of them, to order the proceedings to be stayed on payment of part only of any penalty incurred, with or without costs, or on payment only of the costs incurred in such prosecution, or any part thereof, as they shall judge proper.

Powers of this act to continue in the persons farming the duties.

Persons farming the duties to have the same remedies for duties as H. M.

§ 61. All the powers, provisions, articles, clauses, penalties, forfeitures, and all other directions, matters and things prescribed by this act, with relation to the said duties, or to the persons appointed to collect the same, shall be put in force and carried into execution by the person or persons farming the said duties, in like manner as any collector is empowered to execute the same; and the person or persons farming the said duties shall be entitled to the same privileges, and have the like remedies for collecting and recovering the duties as if the duties were sued for by or on behalf of H. M., and such duties had not been let to farm.

Indemnity to persons sued for any thing done in pursuance of this act.

§ 62. If any person shall at any time be sued, molested, or prosecuted for any thing by him done in pursuance of this act, such person may plead the general issue, and give the special matter in evidence; and if a verdict shall pass for the defendant or the

plaintiff shall become nonsuited, such defendant shall have treble costs against such plaintiff. 4 G. 4. c. 62.

Penalty on officers neglecting duty.

§ 63. If any person employed in the execution of this act, in relation to the said duties, shall wilfully refuse or neglect to do any matter or thing by this act required to be done by such person, whereby any of H. M.'s subjects shall sustain any damage, such person shall be liable in any action to be founded on this statute, to answer to the party aggrieved all such damages, with full costs of suit.

What proofs shall be sufficient to shew that persons are farmers or collectors.

§ 64. From and after the said 31st day of *January* 1824, it shall not be necessary, upon the trial or hearing of any information, action, suit or other proceeding to be commenced for the recovery of any of the said duties which shall be let to farm, or for the recovery of any penalty, to produce the instrument whereby the commissioners of stamps in *G. B.* shall be authorised by the commissioners of H. M.'s treasury to let to farm the duties granted by this act; or to produce the commission whereby the commissioners of stamps shall be constituted and appointed such commissioners; or to prove that the persons executing any contract or agreement, or any commission, deputation, authority, or other instrument, are or act as commissioners of stamps; or to prove the execution of any contract or agreement whereby any of the said duties shall be let to farm; or to prove the execution of any assignment of any such contract or agreement; or to prove the execution of any commission, deputation or authority whereby any person shall be appointed a collector of any of the said duties, by the commissioners of stamps; or to prove the signatures of the commissioners of stamps to any consent to prosecute for such penalty: Provided always, that such contract, agreement, assignment, commission, deputation, or authority and consent to prosecute, shall be produced on the trial or hearing of any such information, &c.; and it shall be made to appear that the person claiming or acting under such contract, agreement, assignment, commission, deputation or authority, had in fact acted as the farmer or collector of the duties; and that in every such case such proof shall be deemed by the judges or justices to be good and legal evidence of such person being the farmer or collector described in such contract, &c., unless by other evidence the contrary shall be made to appear.

The duties to be paid to the receiver general, and by him into the exchequer.

§ 65. All the monies to arise from the duties granted by this act shall be paid into the hands of the receiver general of the stamp duties in *G. B.*, who shall pay the same into the bank of *England*, for safe custody, and shall thereafter pay the same (after deducting the charges of collecting, &c.) into the receipt of H. M.'s exchequer at *Westminster*, in one sum, at such times and in such manner as the present stamp duties are by the laws in force directed to be paid; and the monies so paid into the said receipt shall be carried to the consolidated fund of the U. K. of *G. B.* and *Ireland*.

Potatoes, Stealing. See **Turnips**, Vol. V.

Pound Breach. See **Distress**, Vol. I.

Powder for the Hair. See **Taxes**, Vol. V.

Praemunire.

[27 Ed. 3. c. 1.—16 R. 2. c. 5.—5 El. c. 1.]

What it is.

PRAEMUNIRE is so called from a word in the writ, *Præmunire facias præfatum* A. B. *quod tunc sit coram nobis, &c.* where *præmunire* is used for *præmonere*, to warn the person to appear, as is directed in stat. 27 *Ed.* 3. c. 1. hereafter following. 1 *Inst.* 129.

Power of justices of the peace.

Notwithstanding that *præmunire* is not within the letter of the commission of the peace, yet inasmuch as it is against the peace of the king and of the realm any justice of the peace may either on his own knowledge or the complaint of others cause any person to be apprehended for such offence, and may take the examination of the person so apprehended, and the information of all who can give material evidence against him, and put the same in writing, and bind over the witnesses to the K. B. or gaol delivery; and certify his proceedings to the same court to which he shall bind over such informers. 2 *Haw. c.* 8. § 34. *Hale's Sum.* 168.

27 G. 3. c. 1. Impeaching judgments in the king's court, a præmunire.

By stat. 27 *Ed.* 3. *c.* 1. called the statute of provisors, they who shall draw any out of the realm in plea whereof the cognisance pertaineth to the king's court, or which do sue in any other court, to defeat or impeach the judgments given in the king's court, shall have a day, containing the space of two months, by warning to be made to them, by the sheriffs or other officers, to appear to answer in their proper persons for the contempt; and if they come not at the said day in their proper person to be at law, they, their procurators, attornies, executors, notaries, and maintainers, shall from that day forth be put out of the king's protection, and their lands, goods, and chattels forfeit to the king, and their bodies wheresoever they may be found shall be taken and imprisoned, and ransomed at the king's will. And upon the same a writ shall be made, to take their bodies and to seize their lands, goods and possessions, into the king's hands. And if it be returned that they be not found, they shall be put in exigent, and outlawed.

16 R. 2. c. 5. Suing out foreign process, a præmunire.

And by stat. 16 *R.* 2. *c.* 5. commonly called the statute of *præmunire*, and to which the several subsequent statutes do refer, both those who pursue, or cause to be pursued, in the court of *Rome*, or elsewhere, any processes or instruments or other things whatsoever, which touch the king, against him, his crown and regality, or his realm, and also those who shall bring, receive, notify, or execute them, and their faulters, and abettors, shall be *out of the king's protection;* and their *lands and tenements, goods and chattels, forfeit* to the king; and they shall be attached by their bodies, if they may be found, and brought before the king and his council, there to answer; or process shall be made against them by *præmunire facias*, in manner as it is ordained in other statutes of provisors.

And in these two statutes, as above recited, are contained the pains and penalties of what is called the *præmunire*. They were

intended chiefly to oppose the papal encroachments in this realm; but the penalties thereof, by several subsequent statutes, are extended to other cases which have no relation to popery.

Out of the king's protection.] So odious was this offence formerly, that a man who was attainted on the same might have been slain by any one without danger of law; because it was provided by law, that a man might do to him as to the king's enemy, and a man may lawfully kill an enemy; and therefore by stat. 5 *El, c.* 1. it is enacted that it shall not be lawful for any one to slay any person attainted in or upon a *præmunire*. 1 *Inst.* 130.

Persons guilty of a præmunire, might formerly have been killed.

But he is so far out of the king's protection, that he is disabled to bring an action for any injury whatsoever. And no one knowing him guilty can with safety give him aid, comfort, or relief. *Inst.* 129, 130. 1 *Haw. c.* 19. § 47.

Are disabled to bring an action.

And Mr. *Hawkins* says it has been questioned, whether he hath a right to demand surety of the peace. But *Lambard* and *Dalton*, which are the authorities he cites for it, incline to think that he hath such right. *Lambard* alleges for it the statute of 5 *El.* above mentioned; and *Dalton* asserts it without doubting. *Lamb.* 80. *Dalt.* 272. 1 *Haw. c.* 60. § 3.

Whether he may demand sureties.

Lands and tenements——forfeited.] Yet tenant in tail shall only forfeit lands during life; for albeit the statute enacteth that lands and tenements shall be forfeited, that must be understood of such an estate as he may lawfully forfeit, and that is during his own life. 1 *Inst.* 130.

Lands and tenements.

Attainder in præmunire worketh no corruption of blood. *Inst.* 391.

Corruption of blood.

Prosecutions, however, for a *præmunire* are unheard of in our courts. The only instance of one to be found is in the State Trials; where the penalties of a *præmunire* were inflicted on some persons for refusing to take the oath of allegiance in the reign of *Charles* II. See 6 *Howell's St. Tr.* 201, & 210.

Presentment.

A PRESENTMENT is that which the grand jury find and present to the court, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing else differs from an indictment.

The presentment is drawn up in English by the jury, in a short note, for instructions to draw the indictment by; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer it; and it differs from an indictment, in that an indictment is drawn up at large, and brought ingrossed to the grand jury to find. 2 *Lill. Abr.* 353. 2 *Inst.* 739.

There are other presentments of churchwardens, constables, surveyors of the highways, and justices of the peace; all which may be seen under their proper titles. See Vol. I. pages 233, 234.

Printers.

[38 G. 3. c. 78.—39 G. 3. c. 79.—51 G. 3. c. 65.]

38 G. 3. c. 78. No person to print or publish a newspaper until an affidavit be delivered at the stamp office.

BY stat. 38 *G*. 3. *c*. 78. § 1. it is enacted that no person shall, after forty days from the passing of this act, print or publish, or cause to be printed or published, any newspaper or other paper, containing public news or intelligence, or serving the purpose of a newspaper, until an affidavit or affirmation, made and signed as hereinafter mentioned, shall be delivered to the commissioners for managing H. M.'s stamp duties, at their head office, or to some officer in the respective towns, and at the respective offices which shall be appointed by the said commissioners, for the purpose of receiving such affidavits or affirmations, (but which shall not be required to be upon stamped paper,) containing the several matters and things hereinafter specified.

An action for work and labour cannot be brought for printing a work distributed weekly as a newspaper, unless the printer comply with the provisions of this statute. *Marchant* v. *Evans*, 8 *Taunt*. 142.

Affidavit to specify the names and abode of the printer, publisher, and of the proprietors, if they do not exceed two, exclusive of the printer and publisher, and if they do, then of two, and the proportional shares, &c.

§ 2. Enacts that such affidavit or affirmation shall specify the real and true names, additions, descriptions, and places of abode of every person and persons who is and are intended to be the printer and printers, publisher and publishers, of the newspaper or other paper mentioned in such affidavit or affidavits, or affirmation or affirmations, and of all the proprietors of the same, if the number of such proprietors, exclusive of the printer and publisher, does not exceed two, and in case the same shall exceed such number, then of two of such proprietors, exclusive of the printer and publisher, and also the amount of the proportional shares of such proprietors in the property of the newspaper or other paper, and the true description of the house or building wherein any such paper is intended to be printed, and likewise the title of such paper.

Where the proprietors exceed two, the names of two whose shares shall not be less than the others, &c. to be specified.

§ 3. Provides, that in every case where the number of such proprietors, exclusive of the printer and publisher, does exceed two, the names of two proprietors, the amount of each of whose proportional shares in the property of such newspaper or other paper shall not be less than the proportional share of any other proprietor, exclusive of the printer and publisher, shall be specified and set forth in such affidavit or affirmation.

Affidavit to be made as often as the printers, publishers, or proprietors, or their abode shall be changed, &c. or as often as the commissioners for stamps shall require.

§ 4. Enacts, that an affidavit or affirmation of the like import shall be made, signed, and given, in like manner, as often as any of the printers, publishers, or proprietors named in such affidavits or affirmations shall be changed, or shall change their respective places of abode, or their printing-house, place, or office, and as often as the title of the paper shall be changed, and as often as the commissioners for managing the stamp duties shall see reasonable cause for requiring such affidavit or affirmation to be made, signed, and sworn, or affirmed, and shall give notice that they do require the same, such notice to be left at such place as is men-

tioned in the affidavit or affirmation last delivered as the place at which the newspaper or other paper to which such notice shall relate is printed. 38 G.3. c.78.

Affidavit to be signed by the parties, and taken by a commissioner or officer specially appointed.

§ 5. Enacts, that every such affidavit or affirmation shall be in writing, and signed by the person making the same, and shall be taken by any one of the said commissioners, or by any officer specially appointed to receive such affidavits or affirmations as aforesaid, which commissioners and other officers are hereby authorised to take such affidavits upon the oath of the person making the same, and such affirmations in the case of persons commonly called *Quakers*.

Where the printers, publishers, and proprietors, required to be named in the affidavit, do not exceed four, the whole to swear; and where they do exceed that number, four to swear to certain particulars, and to give notice to the parties not swearing, on penalty of 50*l.* each.

§ 6. Enacts, that where the persons concerned as printers and publishers of any newspaper, or other such paper as aforesaid, together with such number of proprietors as are hereinbefore required to be named in such affidavits or affirmations as aforesaid, shall not altogether exceed the number of four persons, the affidavit or affirmation hereby required shall be sworn or affirmed and signed by all the said persons who are adult; and when the number of all such persons shall exceed four, the same shall be signed and sworn or affirmed by four of such persons, if so many of them are adult, or by so many of them as are adult; but the same shall contain the real and true names, descriptions, and places of abode of all and every person and persons who is and are or are intended to be the printer and printers, publisher and publishers, and of so many of the proprietors as are hereinbefore for that purpose mentioned, of such newspaper or other such paper as aforesaid; and the person and persons so signing and swearing to the truth of such affidavit or affirmation, in the last-mentioned case, shall and are hereby required to give notice, within seven days after such affidavit or affirmation shall be so delivered as aforesaid, to each of the persons not signing and swearing or affirming such affidavit or affirmation, but named therein as a proprietor, printer, or publisher, of such newspaper, or other paper as aforesaid, that he or they are so named therein; and in case of neglect to give such notice, each and every person who has so signed and sworn or affirmed such affidavit or affirmation shall forfeit 50*l.*

Penalty of 100*l.* for printing, publishing, or vending a newspaper without an affidavit having been signed, &c.

§ 7. Enacts, that if any person shall knowingly and wilfully print or publish, or cause to be printed or published, or shall knowingly and wilfully, either as a proprietor thereof, or otherwise, sell, vend, or deliver out any newspaper or other such paper as aforesaid, such affidavit or affirmation, containing such matters and things as are required by this act to be therein contained, not having been duly signed, sworn, or affirmed, and delivered, and as often as by this act is required, or any other matter or thing required by this act to be done or performed according to this act, not having been done or performed, such person shall forfeit 100*l.*

Persons making false or imperfect affidavits, liable to the penalties for perjury.

§ 8. Enacts, that if any person making such affidavit or affirmation as by this act is required, shall knowingly and wilfully insert or set forth therein the name or names, addition or additions, place or places of abode, of any person as proprietor, printer, or publisher of any newspaper, or other such paper as aforesaid, to which such affidavit or affirmation relates, who is not a proprietor, printer, or publisher thereof, or shall knowingly and wilfully omit

38 G. 3. c. 78. to mention in such affidavit or affirmation the name or names, addition or additions, and place or places of abode, of any of the proprietors, printers, or publishers thereof, contrary to the true meaning of this act, or shall knowingly and wilfully in any other manner or respect set forth in such affidavit or affirmation any matter or thing by this act required to be set forth otherwise than according to the truth, or shall knowingly or wilfully omit to set forth therein, according to the truth, any matter or thing required by this act to be therein set forth, every person so offending shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

Affidavits to be filed, and they, or certified copies, to be admitted as evidence against the persons swearing, and all mentioned therein, unless proved to the contrary:

§ 9. Enacts, that all such affidavits and affirmations as aforesaid shall be filed and kept in such manner as the said commissioners shall direct, and the same, or copies thereof, certified to be true copies, as hereinafter is mentioned, shall respectively, in all proceedings civil and criminal, touching any newspaper or other such paper as aforesaid, which shall be mentioned in any such affidavits or affirmations, or touching any publication, matter, or thing contained in any such newspaper or other paper, be received and admitted as conclusive evidence of the truth of all such matters set forth in such affidavits or affirmations, as are hereby required to be therein set forth, against every person who shall have signed and sworn or affirmed such affidavits or affirmations, and shall also be received and admitted, in like manner, as sufficient evidence of the truth of all such matters against all and every person who shall not have signed or sworn or affirmed the same, but who shall be therein mentioned to be a proprietor, printer, or publisher of such newspaper or other paper, unless the contrary shall be satisfactorily proved:

but if any person shall have delivered, previous to the publication of the paper to which the proceedings relate, an affidavit that he has ceased to be printer, &c. he shall not be so deemed after such delivery.

provided always, that if any such person or persons respectively, against whom any such affidavit or affirmation, or any copy thereof, shall be offered in evidence, shall prove that he, she, or they hath or have signed, sworn, or affirmed, and delivered to the said commissioners, or such officer as aforesaid, previous to the day of the date or publication of the newspaper or other such paper as aforesaid, to which the proceedings, civil or criminal, shall relate, an affidavit or affirmation that he, she, or they hath or have ceased to be the printer or printers, proprietor or proprietors, or publisher or publishers of such newspaper or other such paper as aforesaid, such person or persons shall not be deemed, by reason of any former affidavit or affirmation so delivered as aforesaid, to have been the printer or printers, proprietor or proprietors, or publisher or publishers of such paper, after the day on which such last-mentioned affidavit or affirmation shall have been delivered to the said commissioners, or their officer as aforesaid.

In newspapers there shall be printed the names and abode of printers and publishers, on penalty of 100*l.*;

§ 10. Enacts, that in some part of every newspaper, or other such paper as aforesaid, there shall be printed the true and real name and names, addition and additions, and place and places of abode of the printer and printers, and publisher and publishers of the same, and also a true description of the place where the same is printed; and in case any person or persons shall knowingly and wilfully print or publish, or cause to be printed or published, any such newspaper or other paper as aforesaid, not containing the particulars aforesaid, and every of them, every such person shall forfeit the sum of 100*l.*; and that proof made in manner

herein mentioned, in any proceeding to recover the same, that the party proceeded against is a printer or publisher of a newspaper or other such paper so printed or published as aforesaid, shall be deemed and taken to be proof that such party is a person wilfully and knowingly printing or publishing, or causing the same to be printed or published, unless he shall satisfactorily prove the contrary thereof.

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and proof, in manner herein mentioned, that the party is the printer, &c. shall be sufficient, unless proved to the contrary.

§ 11. Enacts, that it shall not be necessary, after any such affidavit or affirmation, or a certified copy thereof, shall have been produced in evidence as aforesaid against the persons who signed and made such affidavit, or are therein named, according to this act, or any of them, and after a newspaper, or other such paper as aforesaid, shall be produced in evidence, intituled in the same manner as the newspaper or other paper mentioned in such affidavit or copy is intituled, and wherein the name or names of the printer and publisher, or printers and publishers, and the place of printing, shall be the same as the name or names of the printer and publisher, or printers and publishers, and the place of printing mentioned in such affidavit or affirmation, for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by this act, to prove that the newspaper, or paper to which such trial relates, was purchased at any house, shop, or office belonging to or occupied by the defendant or defendants, or any of them, or by his or their servants or workmen, or where he or they, by themselves, or their servants or workmen, usually carry on the business of printing or publishing such paper, or where the same is usually sold.

After production of the affidavit, or copy, and a paper intituled as therein mentioned, &c. it shall not be necessary to prove the purchase of the paper.

§ 12. Enacts, that service at the house or place mentioned in such affidavit or affirmation as aforesaid, as the house or place at which such newspaper, or other such paper as aforesaid, to which any proceeding, civil or criminal, shall relate, is printed or published, or intended so to be, of any legal notice, summons, subpœna, rule, order, or process, of what nature whatsoever, or to enforce an appearance in any suit, prosecution, or proceeding, civil or criminal, against any printer, publisher, or proprietor of any such newspaper or other paper, shall be deemed and taken to be good and sufficient service thereof respectively, against all persons named in such affidavit or affirmation as the proprietor or proprietors, publisher or publishers, or printer or printers of the newspaper or other paper mentioned in such affidavit or affirmation: provided always, that if any such person or persons respectively as aforesaid shall have signed, sworn, or affirmed, and delivered to the said commissioners, or such officer as aforesaid, previous to the day of the date or publication of the newspaper, or other such paper as aforesaid, to which the proceeding in court shall relate, an affidavit or affirmation that he or they have ceased to be the printer or printers, proprietor or proprietors, publisher or publishers of such newspaper, or other such paper as aforesaid, and shall make proof thereof, such person or persons shall not be deemed, by reason of any former affidavit or affirmation so delivered as aforesaid, to have been the proprietor or proprietors, printer or printers, publisher or publishers of such paper, after the day on which such last-mentioned affidavit or affirmation shall have been delivered to the said commissioners, or such other officer as aforesaid.

Service at the place mentioned in affidavit to be deemed sufficient notice to all persons named therein:

but if any person shall have delivered previous to the publication of the paper to which the proceedings relate an affidavit that he has ceased to be printer, &c. he shall not be so deemed after such delivery.

38 G. 3. c. 78. Prohibiting publication of proceedings pending a trial.

Rex v. *Clement*, *H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 218.—A court of general gaol delivery has the power to make an order to prohibit the publication of the proceedings pending a trial likely to continue for several successive days, and to punish disobedience to such order by fine.

Service of an order of such court, calling upon the editor of a newspaper "to answer for contemptuously publishing such proceedings," at the office at which the newspaper was published, is good service within stat. 38 *G.* 3. *c.* 78. § 12., and the editor not having appeared, the fine was held to be properly imposed upon him in his absence. *S. C.*

Certified copies of affidavits to be delivered on payment of 1s.

§ 13. Enacts, that the commissioners or officers by whom such affidavits or affirmations shall be kept, according to the directions of this act, shall, and they are hereby required, upon application made to them by any person or persons requiring a copy certified according to this act, of any such affidavit or affirmation as aforesaid, in order that the same may be produced in any civil or criminal proceedings, to deliver to the person so applying for the same such certified copy, he or they paying for the same the sum of 1*s.* and no more.

Copies of affidavits certified by the commissioners or officers in whose custody they shall be, to be sufficient evidence.

§ 14. And whereas in many cases it may be productive of public inconvenience to require that the commissioners or officers before whom such affidavits or affirmations, as are hereinbefore mentioned, are made, should be required personally to attend, in order to prove, upon the trial of any action, prosecution, suit, indictment, information, or in any other proceeding, that the parties signing, swearing, or affirming, and delivering such affidavit or affidavits, affirmation or affirmations, did swear or affirm the same in the presence of, and did deliver the same to such commissioners and officers, before and to whom the same shall have been sworn, affirmed, or delivered respectively; it is enacted, that in all cases a copy of any such affidavit or affirmation, certified to be a true copy under the hand or hands of one or more of the commissioners or officers in whose possession the same shall be, shall, upon proof made that such certificates have been signed with the hand-writing of the person or persons making the same, and whom it shall not be necessary to prove to be a commissioner or commissioners, or officer or officers, be received in evidence as sufficient proof of such affidavit or affirmation, and that the same was duly sworn or affirmed, and of the contents thereof; and such copies, so produced and certified, shall also be received as evidence that the affidavit or affirmation, of which they purport to be copies, have been sworn or affirmed according to this act, and shall have the same effect, for the purposes of evidence, to all intents whatsoever, as if the original affidavits or affirmations, of which the copies so produced and certified shall purport to be copies, had been produced in evidence, and been proved to have been duly so certified, sworn, and affirmed, by the person or persons appearing by such copy to have sworn or affirmed the same as aforesaid.

Penalty of 100*l.* on unauthorised persons giving certificates.

§ 15. Enacts, that if any person, not being such commissioner or officer as aforesaid, shall give any such certificate as aforesaid, or shall presume to certify any of the matters or things by this act directed to be certified by such commissioners and officers as aforesaid, or which such commissioners and officers as aforesaid are

hereby empowered or entrusted to certify, he shall forfeit and lose the sum of 100*l.* 38 G. 3. c. 78.

§ 16. Enacts, that if any person shall knowingly and wilfully falsely certify under his hand, that any such affidavit or affirmation, as is required to be made by this act, was duly signed, and sworn or affirmed before him, the same not having been so sworn, or signed, or affirmed, or shall knowingly and wilfully falsely certify that any copy or copies of any affidavit or affirmation, or affidavits or affirmations, is or are a true copy or copies of the affidavit or affirmation, or affidavits or affirmations, of which the same are certified to be such copy or copies, or shall knowingly and wilfully falsely certify or express in any certificate, that the affidavit or affirmation, or affidavits or affirmations, of which any copy or copies are certified to be a true copy or copies, was or were duly sworn or affirmed before the person so certifying, by the party or parties whose name or names appear subscribed to the same, as the name or names of the party or parties swearing and signing, or affirming the same, every person so offending shall forfeit the sum of 100*l.*

Penalty of 100*l.* for falsely certifying that affidavits were sworn to, or that false copies are true, &c.

§ 17. Enacts, that, from and after the 1st day of *July*, 1798, the printer or publisher of every newspaper, or other such paper as aforesaid, shall, upon every day upon which the same shall be published, or within six days after, deliver to the commissioners of stamps at their head office, or to some officer to be appointed by them to receive the same, and whom they are hereby required to appoint for that purpose, one of the papers so published upon each such day, signed by the printer or publisher thereof, in his hand-writing, with his name and place of abode, and the same shall be carefully kept by the said commissioners, or such officer as aforesaid, in such manner as the said commissioners shall direct; and such printer or publisher shall be entitled to demand and receive from the commissioners, or such officers, once in every six days, the amount of the ordinary price of the newspapers or other papers so delivered; and in every case in which the printer and publisher of such newspaper, or other paper as aforesaid, shall neglect to deliver one such newspaper, or other paper, in the manner hereinbefore directed, such printer and publisher shall, for every such neglect respectively, forfeit and lose the sum of 100*l.*; and in case any person or persons shall make application to the commissioners, or such officer as aforesaid, in order that such newspaper, or other paper, so signed by the printer or publisher, may be produced in evidence in any proceeding civil or criminal, the said commissioners, or such officers, shall, at the expense of the party applying, at any time within two years from the publication thereof, either cause the same to be produced in the court in which the same is required to be produced, and at the time when the same is required to be produced, or shall deliver the same to the party applying for it, taking, according to their discretion, reasonable security, at his expense, for the returning the same to the said commissioners, or such officer; and in case, by reason that the same shall have been previously required by any other person to be produced in any court, or hath been previously delivered to any other person for the like purpose, the same cannot be produced at the time required, or be delivered according to such ap-

A copy of every newspaper to be delivered within a limited time to the commissioners of stamps, or their officer, on penalty of 100*l.* which may, within two years after publication, be produced as evidence in court.

38 G. 3. c. 78. plication, in such case the said commissioners, or such their officer, shall cause the same to be produced, or shall deliver the same as soon as they are enabled so to do.

Penalty of 20*l.* for printing or publishing newspapers not duly stampt.

§ 18. Enacts, that if any person shall knowingly and wilfully print or publish, or cause to be printed or published, any newspaper, or other such paper as aforesaid, the same not being printed upon paper duly stamped according to law, he shall forfeit and pay, over and above all other penalties recoverable by law, the sum of 20*l.* for every such newspaper, or other paper as aforesaid, so printed upon paper not duly stamped; and proof made in manner hereinbefore mentioned, in any proceeding to recover the same, that the party proceeded against is a printer or publisher of such newspaper or other paper as aforesaid, which shall be so printed or published upon paper not duly stamped according to law, shall be deemed and taken to be proof that such party is a person wilfully and knowingly printing or publishing, or causing the same to be printed or published, contrary to the present provision of this act, unless he shall satisfactorily prove the contrary thereof.

Penalty of 20*l.* for having a newspaper not duly stampt.

§ 19. Enacts, that if any person shall knowingly and wilfully take or receive into, and keep in his custody any newspaper, or other such paper as aforesaid, not duly stamped according to law, such person shall forfeit for every such paper as aforesaid, not duly stamped, which he shall so take or receive into, and keep in his custody, the sum of 20*l.*

Penalty of 100*l.* for sending or procuring newspapers not duly stampt to be sent out of G. B.

§ 20. Enacts, that if any person shall knowingly or wilfully, directly or indirectly, send or carry, or endeavour to send or carry, or cause or procure to be sent or carried, or do or cause to be done any act whatever for or towards the sending or carrying, or for or towards the causing or procuring to be sent or carried, or with intent that the same should be sent or carried out of *G. B.* any newspaper or other such paper as aforesaid, the same not being printed on paper duly stamped according to law, such person shall forfeit and pay, for every such offence, the sum of 100*l.*

The names and abode of proprietors out of G. B. to be specified in affidavits.

§ 23. Enacts, that in case any proprietor of any newspaper, or other such paper as aforesaid, shall be resident out of *G. B.*, the name and place of abode of such proprietor shall be specified in such affidavit or affirmation as are hereinbefore required to be made and delivered as aforesaid.

Penalty for printing or publishing any seditious matter under colour of having been printed in a foreign paper.

§ 24. After reciting that matters tending to excite hatred and contempt of the person of H. M., and of the constitution and government established in these kingdoms, are frequently published in newspapers, or other papers, under colour of having been copied from foreign newspapers, or other papers of a like nature; enacts, that if any person shall print or publish, or cause to be printed or published, in any newspaper or other such paper as aforesaid, that shall be printed or published in that part of *G. B.* called *England*, any matter or thing having such tendency as aforesaid, as having been previously printed or published in some foreign paper or print, which hath not been previously so printed or published, such person shall, being lawfully convicted thereof, be committed to prison for any time not exceeding twelve nor less than six months, and shall be liable to such other punishment as

may by law be inflicted in cases of high misdemeanors; and in every proceeding against any person in respect of his having so printed or published as aforesaid any such matter or thing as aforesaid, it shall be incumbent upon the person against whom the proceeding shall be, to make proof that the same had been previously printed and published in some foreign paper or print; and in case he shall fail so to do, the same shall be deemed and taken not to have been so previously printed and published.

38 G.3. c.78. Proof of its having been so previously printed to lie on the defendant.

§ 25. Provides, that if such proof shall be made, the publication respecting which such proceeding shall be had shall nevertheless be deemed and taken to be of such nature in the law as the same would have been deemed and taken to be if this act had not been made.

Proviso for such proof.

§ 26. Enacts, that, from and after forty days next after the passing of this act, no person other than a commissioner or officer of H. M.'s stamp duties shall sell or supply to any person or persons, paper stamped for the purpose of being used for printing newspapers or other such papers as aforesaid, until the person so selling or supplying the same shall have given such security to the said commissioners, or some of their officers to be by them appointed for that purpose, as the said commissioners shall think reasonable, duly to deliver or cause to be delivered to the said commissioners, once in six weeks, a true and accurate account of the quantities and kinds of such stamped paper by them sold and supplied during such weeks, and to whom by name, and that such persons so selling or supplying such paper will not sell or supply any such paper to or on account of any persons, save only to or on account of such persons as shall ordinarily deal in the selling and supplying such paper, or to or on account of printers, publishers, or proprietors of newspapers or such other papers; and that they will not sell or supply the same to or on account of any such printers, publishers, or proprietors, until the persons applying to them for the same shall have delivered to them a certificate, signed by one or more of the said commissioners, or some officer to be appointed by them for that purpose, purporting that such security as is required by law hath been given by the printers and proprietors respectively of the newspaper or other paper, for the printing of which such stamped paper is to be sold or supplied, and that such affidavits or affirmations have been made and delivered respecting the same as are required by this act; and that they will not sell or supply any such paper, to or on account of any printers, proprietors, or publishers of newspapers or other such papers as aforesaid, with respect to whom notice shall be given to them by the said commissioners that such security is not duly given, or is not remaining in force, or that the parties who have given the same are dead, or are gone abroad, or are not to be found, or that such parties have given notice that they are no longer concerned as printers, publishers, or proprietors of such newspapers or other papers, or that no such affidavits or affirmations respecting the same, as are required by this act, have been made and delivered; and in case any person, other than such as aforesaid, shall, after forty days as aforesaid, sell or supply any such paper as aforesaid, not having previously given such security as aforesaid, he shall forfeit, for every such offence, the sum of 100*l.* to be recovered as hereinafter is mentioned.

None but commissioners of stamps, or their officer, to supply paper stamped for printing newspapers until the person so supplying has given security to deliver, once in six weeks, an account of the quantities and kind sold, &c. on penalty of 100*l.*

38 G. 3. c. 78. Persons concerned in printing or publishing newspapers not legally stamped, to be debtors to H. M. in the sum that would have accrued if duly stamped, &c.

§ 27. Enacts, that every person and persons printing or publishing, or causing to be printed or published, or being concerned, either as proprietors or otherwise, in printing or publishing, or causing to be printed or published, any newspaper or other such paper as aforesaid, upon paper not stamped, or not stamped as by law is required, shall be deemed and taken to owe to H. M. such sums as would have accrued to H. M. in case the same had been printed upon paper duly stamped; and in case any information or bill shall be filed, or other proceeding shall be had on H. M.'s behalf, for discovery of the matters aforesaid, and an account and payment of such sums, it shall not be lawful for the defendant, on any account, to plead or demur to such information, bill, or proceeding, but he and they shall be compellable to make such discovery as is thereby required to be made: provided nevertheless, that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant or defendants, save only in that proceeding in which the discovery is made.

To bills for the discovery of proprietors, printers, editors, or publishers, of newspapers, the defendants compellable to make it,

§ 28. Enacts, that if any person or persons shall file any bill in any court for the discovery of the names of any persons concerned in the property of or as printers, editors, or publishers of, or otherwise, in any newspaper, or other such paper as aforesaid, or of any matters relative to the printing or publishing thereof, in order to enable him or them the more effectually to bring or carry on any suit or action for damages by him or them alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper or other paper as aforesaid, respecting such person or persons, it shall not be lawful for the defendants to plead or demur to such bill, but they shall be compellable to make the discovery thereby required: provided nevertheless, that such discovery shall not be made use of as evidence, or otherwise, in any proceeding against the defendants, save only in that proceeding in which the discovery is made.

Recovery of penalties. See § 22.

§ 29. Enacts, that all fines, penalties, and forfeitures by this act imposed, which shall exceed the sum of twenty pounds, shall (except where this act hath otherwise directed) be recovered by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, or the courts of great session in the principality of *Wales*, or the courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, or in the court of session or court of exchequer in *Scotland*, (as the case shall require,) wherein no essoign, privilege, protection, wager of law, or more than one

Not exceeding 20*l*.

imparlance shall be allowed; and that all fines, penalties, and forfeitures, by this act imposed, which shall not exceed the sum of twenty pounds, shall, on proof upon oath of the offence before any justice of the peace of the county, riding, stewartry, city, or place, where the offence shall be committed, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice, rendering the overplus, if any, on demand, after deducting the charges of such distress and sale, to the person whose goods and chattels have been so distrained and sold; and for want of sufficient distress, such justice is hereby

Commitment.

required, in all cases where no particular time of commitment is hereinbefore directed, to commit such offender to the common gaol of the county, riding, stewartry, city, or place, where the

offence shall have been committed, for any time not exceeding three months; and the money arising by all such fines, penalties, and forfeitures, when recovered, shall be, as to one moiety thereof, to and for the use of our sovereign lord the king, his heirs and successors, and as to the other moiety thereof, to and for the use of such person who shall inform or sue for the same, except in such cases in which the application thereof is otherwise directed by this act. 38 G. 3. c. 78. Application of penalties.

§ 30. Enacts, that no order or conviction made in pursuance of this act by any justice of the peace shall be removed by *certiorari*, advocation, or suspension, out of the county, riding, stewartry, or place, wherein such order or conviction shall be made, into any court whatever; and that no writ of *certiorari*, advocation, or suspension shall supersede execution, or other proceedings upon any such order or conviction, but that execution and other proceedings shall be had thereupon, any such writ or writs, or allowance thereof, notwithstanding. No order or conviction of a justice to be removed into any court, or the execution superseded.

§ 31. Provides, that nothing in this act contained shall be construed to extend to that part of *G. B.* called *Scotland*, save and except so much thereof as relates to the printing or publishing newspapers, or such other papers as aforesaid, upon paper not duly stamped, and so much thereof as relates to the taking and receiving into, and keeping in the custody of any person any such newspapers or other papers not duly stamped, and to the sending or carrying newspapers or other such papers as aforesaid out of *G. B.*, and to the summoning and examining persons for the discovery of such persons as are concerned in so sending or carrying the same, and the seizing and taking the same as forfeited. Act to extend to Scotland in certain cases only.

It has been determined, in the construction of this act, that an affidavit containing all the particulars required by the act, together with a copy of a newspaper produced from a stamp office, containing the libel, and corresponding exactly with the description in the affidavit, is not only evidence of the publication by the parties named, but also that the paper was published in that particular county, where the affidavit specifies it to have been printed. *R.* v. *Hart and White*, 10 *East*, 94. 2 *Phill. Ev.* 150. This would be good evidence of such a publication under the 9th section, without the aid of the 11th section, which last renders it most clearly admissible. The publication may be proved by the original affidavit, signed by the defendant as the sole proprietor of the paper, and specifying the place where it was intended to be published, together with proof that a copy of the paper, containing the alleged libel, had been there purchased. *R.* v. *White*, 3 *Campb.* 100. 2 *Phill. Ev.* 150. If a certified copy of the affidavit is produced in evidence, purporting to have been sworn before a distributor of stamps in the country, it ought to be proved that he had authority to take the affidavit, unless the affidavit itself state the fact; if the *jurat* purport that the officer had such authority, further proof will not be necessary. *R.* v. *White*, 3 *Campb.* 99. 2 *Phill. Ev.* 150.

By stat. 39 *G.* 3. *c.* 79. intituled, "*An act for the more effectual suppression of societies established for seditious and treasonable purposes; and for better preventing treasonable and seditious practices.*" 39 G. 3. c. 79.

39 G. 3. c. 79. Printers to give a notice in the form in the annexed schedule to the clerk of the peace, who shall grant a certificate, and file the notice, and transmit an attested copy to the secretary of state.

§ 23. After reciting that "whereas many societies, established of late years for treasonable and seditious purposes, and especially societies of *United Englishmen*, *United Scotsmen*, *United Irishmen*, and *United Britons*, and the society called *The London Corresponding Society*, and other corresponding societies, have at various times caused to be published, in great quantities, divers printed papers of an irreligious, treasonable, and seditious nature, tending to revile our holy religion, and to bring the profession and worship thereof into contempt among the ignorant, and also to excite hatred and contempt of H. M.'s royal person, government, and laws, and of the happy constitution of these realms, as by law established, and utterly to eradicate all principles of religion and morality; and such societies have dispersed such printed papers among the lower classes of the community, either *gratis*, or at very low prices, and with an activity and profusion beyond all former example: And whereas all persons printing or publishing any papers or writings are by law answerable for the contents thereof; but such responsibility hath of late been in a great degree eluded by the secret printing and publication of such seditious, immoral, and irreligious papers or writings as aforesaid, and it is therefore highly important to the public peace that it should in future be known by whom any such papers shall be printed;" enacts, that every person having any printing press, or types for printing, shall cause a notice (B) thereof, signed in the presence of and attested by one witness, to be delivered to the clerk of the peace acting for the county, stewartry, riding, division, city, borough, town, or place, where the same shall be intended to be used, or his deputy, according to the form prescribed in the schedule hereunto annexed; and such clerk of the peace, or deputy respectively, shall, and he is hereby authorised and required to grant a certificate (C) in the form prescribed in the schedule hereunto annexed, for which such clerk of the peace, or deputy, shall receive the fee of one shilling and no more, and such clerk of the peace, or his deputy, shall file such notice, and transmit an attested copy thereof to one of H. M.'s principal secretaries of state; and every person who, not having delivered such notice, and obtained such certificate as aforesaid, shall, from and after the expiration of forty days next after the passing of this act, keep or use any printing press or types for printing, or having delivered such notice, and obtained such certificate as aforesaid, shall use any printing press or types for printing in any other place than the place expressed in such notice, shall forfeit 20*l.*

Penalty of 20*l.* for keeping presses or types without notice, or using them in any place not expressed therein.

Not to extend to H. M.'s printers, or the universities in England.

§ 24. Provides, that nothing herein contained shall extend to H. M.'s printers for *England* and *Scotland*, or to the public presses belonging to the Universities of *Oxford* and *Cambridge* respectively.

Letter founders and printing-press makers to give a notice, in the form in the annexed schedule, to the clerk of the peace, who shall grant a certificate and file

§ 25. Enacts, that every person carrying on the business of a letter founder, or maker or seller of types for printing, or of printing presses, shall cause notice (D) of his or her intention to carry on such business to be delivered to the clerk of the peace of the county, stewartry, riding, division, city, borough, town, or place, where such person shall propose to carry on such business, or his deputy, in the form prescribed in the schedule to this act annexed; and such clerk of the peace, or his deputy, shall and he is hereby authorised and required thereupon to grant a certificate

in the form (E) also prescribed in the said schedule, for which such clerk of the peace, or his deputy, shall receive a fee of one shilling, and no more, and shall file such notice, and transmit an attested copy thereof to one of H. M.'s principal secretaries of state; and every person who shall, after the expiration of the said forty days, carry on such business, or make or sell any type for printing, or printing press, without having given such notice, and obtained such certificate, shall forfeit 20*l*.

39 G. 3. c. 79.

the notice, and transmit an attested copy to the secretary of state.

Penalty of 20*l*. for carrying on such businesses without giving notice.

§ 26. Enacts, that every person who shall sell types for printing, or printing presses, as aforesaid, shall keep a fair account in writing, of all persons to whom any such types or presses shall be sold, and shall produce such accounts to any justice of the peace who shall require the same; and if such person shall neglect to keep such account, or shall refuse to produce the same to any such justice, on demand in writing to inspect the same, such person shall forfeit for such offence, the sum of 20*l*.

An account to be kept of types and printing presses sold, and to be produced when required, on penalty of 20*l*.

§ 27. Enacts, that every person who shall print any paper or book whatsoever, which shall be meant or intended to be published or dispersed, whether the same shall be sold or given away, shall print upon the front of every such paper, if the same shall be printed on one side only, and upon the first and last leaves of every paper or book which shall consist of more than one leaf, in legible characters, his or her name, and the name of the city, town, parish, or place, and also the name (if any) of the square, street, lane, court, or place, in which his or her dwelling-house or usual place of abode shall be; and every person who shall omit so to print his name and place of abode on every such paper or book printed by him, and also every person who shall publish or disperse, or assist in publishing or dispersing, either *gratis* or for money any printed paper or book, which shall have been printed after the expiration of forty days from the passing of this act, and on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so published or dispersed by him forfeit 20*l*.

The name and abode of the printer to be printed on every paper or book.

Penalty 20*l*.

Bensley and Another v. *Bignold*, *H.* 2 *G.* 4. 5 *B.* & *A.* 335.—A printer cannot recover for labour or materials used in printing any work, unless he affixes his name to it, pursuant to stat. 39 *G.* 3. *c.* 79. § 27.

§ 28. Enacts, that nothing in this act contained shall extend to any papers printed by the authority and for the use of either house of parliament.

Not to extend to papers printed by authority of parliament.

§ 29. Enacts, that every person who shall print any paper for hire, reward, gain, or profit, shall carefully preserve and keep one copy (at least) of every paper so printed by him or her, on which he or she shall write, or cause to be written or printed, in fair and legible characters, the name and place of abode of the person or persons by whom he or she shall be employed to print the same; and every person printing any paper for hire, reward, gain, or profit, who shall omit or neglect to write, or cause to be written or printed as aforesaid, the name and place of his or her employer on one of such printed papers, or to keep or preserve the same for the space of six calendar months next after the printing thereof, or to produce and shew the same to any justice of the peace, who, within the said space of six calendar months,

Printers to keep a copy of every paper they print, and write thereon the name and abode of their employer.

Penalty of 20*l*. for neglect, or refusing to produce the copy within six months.

39 G. 3. c. 79. shall require to see the same, shall, for every such omission, neglect, or refusal, forfeit 20*l*.

Persons selling, &c. any paper without the name and abode of the printer, may be taken before a justice to determine whether they have offended against this act.

§ 30. Enacts, that it shall be lawful for any person, to whom or in whose presence any printed paper, not having the name and place of abode of any person printed thereon, in manner hereinbefore directed, or having a fictitious or false name or place of abode printed thereon, shall be sold, or offered for sale, or shall be delivered *gratis*, or offered so to be, or shall be pasted, fixed, or left in any public place, or in any other manner exposed to public view, to seize and detain the person so selling or offering to sell, or delivering or offering to deliver, or pasting, fixing, or leaving in any public place, or in any other manner exposing to public view, any such printed paper as aforesaid, and forthwith to take and convey him or her before some justice of the peace for the county, stewartry, riding, division, city, borough, town, or place where such person shall be seized, or to deliver him or her to some constable or other peace officer, to be taken and conveyed before such justice as aforesaid, to the intent that such justice may hear and determine whether such person hath been guilty of any offence against this act.

Not to extend to impressions of engravings, or the printing names and addresses, &c.;

§ 31. Provides, that nothing herein contained shall extend to the impression of any engraving, or to the printing by letter-press, of the name, or the name and address, or business or profession, of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction, or otherwise.

nor to alter any provisions respecting newspapers.

§ 32. Provides, that nothing herein contained shall extend to alter or vary any rule, regulation, or provision contained in any act of parliament now in force respecting the printing, publishing, or distributing any printed newspaper, or other printed paper.

A justice may empower a peace officer to search for presses and types he suspects to be illegally used, and to seize them and the printed papers found.

§ 33. Enacts, that if any justice of the peace, acting for any county, stewartry, riding, division, city, borough, town, or place, shall, from information upon oath, have reason to suspect that any printing press or types for printing is or are used or kept for use without notice given and certificate obtained as required by this act, or in any place not included in such notice and certificate, it shall be lawful for such justice, by warrant under his hand and seal, to direct, authorise, and empower any constable, petty constable, borsholder, headborough, or other peace officer, in the day time, with such person or persons as shall be called to his assistance, to enter into any such house, room, and place, and search for any printing press or types for printing; and it shall be lawful for every such peace officer, with such assistance as aforesaid, to enter into such house, room, or place in the daytime accordingly, and to seize, take, and carry away, every printing press found therein, together with all the types and other articles thereto belonging, and used in printing, and all printed papers found in such house, room, or place.

Prosecutions to be commenced within three months.

§ 34. Provides, that no person shall be prosecuted or sued for any penalty imposed by this act, unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred.

Recovery of penalties.

§ 35. Enacts, that any pecuniary penalty imposed by this act exceeding 20*l*. may be sued for and recovered, by any person who will sue for the same, by action of debt, in any of H. M.'

courts of record at *Westminster*, if such penalty shall have been incurred in *England* or *Wales*, or the town of *Berwick-upon-Tweed*, and in H. M.'s court of exchequer in *Scotland*, if such penalty shall have been incurred in *Scotland*, in which action it shall be sufficient to declare or allege that the defendant is indebted to the plaintiff in the sum of 20*l*., (being the sum demanded by such action,) being forfeited by an act, made and passed in 39 *Geo.* 3. intituled *An Act* [*here set forth the title of the act* (*a*)], and the plaintiff, if he shall recover in any such action, shall have his full costs; and any pecuniary penalty imposed by this act, and not exceeding the sum of 20*l*., and for the recovery whereof no provision is hereinbefore contained, shall and may be recovered before any justice of the peace for the county, stewartry, riding, division, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way; and in case such last-mentioned penalty shall not be forthwith paid, such justice shall, by warrant under his hand and seal, and directed to any constable or other peace officer, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale; and in case no sufficient distress can be had or made, such justice shall commit the offender to the common gaol or house of correction for such county, stewartry, riding, division, city, borough, town, or place, there to remain without bail or mainprise, for any time not exceeding six calendar months, nor less than three calendar months. 39 G. 3. c. 79.

§ 36. Enacts, that all pecuniary penalties and forfeitures imposed by this act shall, when recovered, either by action in any court, or in a summary way before any justice, be applied and disposed of in manner hereinafter mentioned; that is to say, one moiety thereof to the plaintiff in any such action, or the informer, before any justice; and the other moiety thereof to H. M. **Application of penalties.**

(*a*) Ante, page 811.

Fleming q. t. v. *Bailey*, *T.* 1804. 5 *East*, 313. The declaration, which was framed on stat. 39 *G.* 3. *c.* 79. stated that the defendant was *indebted* to the plaintiff in 60*l*.; and then contained three counts, in each of which the plaintiff went for a penalty of 20*l*. under the statute, for printing a certain paper meant to be published and dispersed, and omitting the printer's name and place of abode, as required by § 27. It was moved in arrest of judgment, that no action lay by a common informer to recover penalties not exceeding 20*l*. under this statute; and § 35. was cited. On shewing cause it was contended, that the jurisdiction of the superior courts could not be ousted without express words, or by necessary implication; and that here no such words or necessity existed. *Hill* v. *Dechair*, *Sty.* 381. *Shipman* v. *Henbest*, 4 *T. R.* 109. *R.* v. *Moreley*, 2 *Burr.* 1040. *Cates* q. t. v. *Knight*, 3 *T. R.* 442. and 2 *Haw.* *c.* 26. § 26—30. were cited. But *per* Lord *Ellenborough* C. J. a common informer can have no right to sue for any penalty, but where power is given to him for that purpose by the statute. Now the statute in question only says, that a common informer may sue in any court of record for any pecuniary penalty imposed by the act *exceeding* 20*l*. The penalty given for this offence, each of which must be taken by itself, and cannot be reckoned accumulatively, does not exceed 20*l*.; and, therefore, it is not within the provisions of § 35. which give an action. And the sense of that clause requires that the form of the declaration there afterwards given should be read the same as if the sum to be recovered were left in blank; for how otherwise can the penalty of 100*l*. given by § 15. be recovered? *Per Cur.* Judgment arrested.

39 G. 3. c. 79. Limitation of actions. § 37. Enacts, that every action which shall be brought or commenced against any justice of the peace, constable, peace-officer, or other person for any thing done or acted in pursuance of this act, shall be commenced within three calendar months next after the fact committed, and the venue in every such action shall be laid in the proper county where the fact was committed, and the defendant in every such action may plead the general issue, &c.; and if such action shall be brought after the time limited, or the venue be laid in any other place, the jury shall find a verdict for the defendant; and in snch case, or if the jury shall find a verdict for the defendant upon the merits, or if the plaintiff shall become nonsuit, &c. or if upon demurrer judgment shall be given against the plaintiff, the defendant shall have double costs, &c.

General issue.

Double costs.

Convictions, &c. to be in the forms in the annexed schedule. § 38. Enacts, that convictions (A) by any justice of the peace, for offences against this act, and notices and certificates delivered and granted, shall or may be in the several forms set forth for such purposes respectively in the schedule to this act annexed.

The Schedule to which stat. 39 G. 3. c. 79. refers.

(A) Form of Conviction of having or using a Printing Press or Types for Printing, without Notice, or using the same in a Place not specified in such Notice, or not keeping Accounts as required by the Act, or any other Offence against the Act.

M } to wit. } *BE it remembered, that on this* —— *day of* ——, *in the* —— *year of the reign of* ——, A. B. *of* —— *is duly convicted before me* [or, *us*] ——, *of his majesty's justices of the peace for* ——, *in pursuance of an act of the thirty-ninth year of the reign of king* George *the third,* [set forth the title of the act (*a*)], *for that the said* A. B. *on the* —— *day of* ——, *at* ——, *did, contrary to the said act, keep* [or, *use,* as the case may be,] *a printing press* [or, *types for printing;* or, *carrying on the business of a letter-founder,* or, *maker or seller of types,* or *printing presses*], *not having given such notice, and obtained such certificate, as by the said act is required* [or, *in* ——, *being a place not specified in any notice given by the said* A. B. *in pursuance of the said act, whereupon he had obtained such certificate, as by the said act is required;* or, *not keeping an account of a person to whom the said* A. B. *sold printing types,* or, *a printing press,* as the case may be; or, *not printing his name,* &c. as the case may require; or, *not keeping a copy of a paper printed by him for hire, reward, gain, or profit, to wit, a paper* [describing it] *which the said* A. B. *printed,* &c. or, *not producing a copy of a paper printed,* &c.] or, specifying any other offence against the act, and the time and place when and where the same was committed]: *Wherefore I* [or, *we*], *the said* ——, *do adjudge that he the said* A. B. *do pay the sum of* ——, *as a penalty for his offence, in pursuance of the said act. Given under our hands and seals, this* —— *day of* ——, *in the year of our Lord* ——, *and in the* —— *year of the reign of his majesty king* ——.

(*a*) Ante, p. 814.

(B) Form of Notice to the Clerk of the Peace, that any Person keeps any Printing Press, or Types for Printing.

To the clerk of the peace for ——— [*here insert the county, stewartry, riding, division, city, borough, town, or place*], or his *deputy.*

I A. B. *of* ——— *do hereby declare, that I have a printing press and types for printing, which I propose to use for printing, within* ——— [as the case may require], *and which I require to be entered for that purpose, in pursuance of an act passed in the thirty-ninth year of the reign of his majesty king* George *the third,* [set forth the title of the act (*a*)]. *Witness my hand this* ——— *day of* ———. (*a*) Ante, p. 811.

Signed in the presence of ———.

(C) Form of Certificate that Notice has been given of a Printing Press, or Types for Printing.

I ——— *clerk* [or, *deputy clerk*] *of the peace for* ——— *do hereby certify, that* A. B. *of* ——— *hath delivered to me a notice in writing, appearing to be signed by him, and attested by* C. D. *as a witness to his signing the same, that he the said* A. B. *hath a printing press and types for printing, which he proposes to use for printing, within* ———, *and which he has required to be entered, pursuant to an act passed in the thirty-ninth year of his* [*late*] *majesty's reign,* [set forth the title of the act (*a*)]. *Witness my hand this* ——— *day of* ———. (*a*) Ante, p. 811.

(D) Form of Notice to the Clerk of the Peace, that any Person carries on the Business of a Letter Founder, or Maker or Seller of Types for Printing, or of Printing Presses.

To the clerk of the peace for [*as the case may be*], or his deputy.

I A. B. *of* ——— *do hereby declare, that I intend to carry on the business of a letter founder or maker or seller of types for printing,* or *of printing presses,* [as the case may be], *at* ———; *and I hereby require this notice to be entered in pursuance of an act passed in the thirty-ninth year of the reign of his majesty king* George *the third,* [set forth the title of the act (*a*)]. (*a*) Ante, p. 811.

Signed in the presence of ———.

(E) Form of Certificate that the above Notice has been given.

I G. H. *clerk* [or *deputy clerk*] *of the peace for* [as the case may be], *do hereby certify, that* A. B. *of* ——— *hath delivered to me a notice in writing, appearing to be signed by him, and attested by* E. F. *as a witness to his signing the same, that he intends to carry on the business of a letter founder, or maker or seller of types for printing,* or *of printing presses, at* ———; *and which notice he has required to be entered in pursuance of an act of the thirty-ninth*

year of his majesty king George *the third* [set forth the title of the act (*a*)]. *Witness my hand this* ——— *day of* ———.

(*a*) Ante, p. 811.

51 G. 3. c. 65.

By stat. 51 *G.* 3. *c.* 65. To explain and amend stat. 39 *G.* 3. *c.* 79. so far as respects certain penalties on printers and publishers.

§ 1. After reciting stat. 39 *G.* 3. *c.* 79. § 27. 35. it is enacted, that nothing in § 27. contained shall extend to make any person offending against the same, liable to more than twenty-five forfeitures or penalties for printing or publishing or dispersing, or assisting in publishing or dispersing any number of copies of one and the same paper or book, contrary to the said section of the said act.

Justices may mitigate penalties.

§ 2. Enacts, that if any justice or other magistrate before whom any person shall be convicted of any offence or offences against the provisions of the before-mentioned act, shall see cause to mitigate such penalty or penalties, it shall be lawful for such justice or other magistrate to mitigate or lessen the same to any sum not less than 5*l.* over and above all reasonable costs and charges expended or incurred in the prosecution.

Name and residence of printers not required to be put to bank notes, bills, &c. or to any paper printed by authority of any public board or public office.

§ 3. After reciting that doubts have arisen whether the provisions contained in the said act may not be considered as extending to notes and post bills of the governor and company of the bank of *England*, and to bills of exchange, promissory notes, bonds, and other securities for payment of money, bills of lading, policies of insurance, letters of attorney, transfers or assignments of public stocks, funds, and other securities, and to dividend warrants, receipts for money or goods, deeds or other instruments, proceedings in the courts of law and equity, and other inferior courts, warrants, orders, and other papers printed by the authority of any public board or public officer in the execution of the duties of their respective offices, many of which securities, instruments, proceedings and other matters aforesaid, are usually wholly or in part printed; declares and enacts, that nothing in the said recited act or in this act contained shall extend to require the name and residence of the printer to be printed upon any such bank-note, bank post bill, bill of exchange, or promissory note, or upon any bond or other security for payment of money, or upon any bill of lading, policy of insurance, letter of attorney, deed or agreement, or upon any transfer or assignment of any public stocks, funds, or other securities, or upon any transfer or assignment of any public stocks, funds, or other securities, or upon any transfer or assignment of the stocks of any public corporation or company, authorised or sanctioned by act of parliament, or upon any dividend warrant of or for any such public or other stocks, funds, or securities, or upon any receipt for money or goods, or upon any proceeding in any court of law or equity, or in any inferior court, warrant, order, or other papers printed by the authority of any public board or public officer in the execution of the duties of their respective offices, notwithstanding the whole or any part of the said several securities, instruments, proceedings, matters, and things aforesaid, shall have been or shall be printed.

Persons aggrieved may

§ 4. Enacts, that if any person shall think himself aggrieved by any conviction, judgment, or determination of any justice re-

lating to any thing in the before-mentioned act contained, he may appeal to the justices of the peace at the general quarter sessions to be holden in and for the county, city, or place, where such conviction, judgment, or determination shall have been made, next after the expiration of twenty days from the making thereof, first giving six days' notice of such appeal to the person or persons prosecuting for such penalty or penalties; and the said justices shall hear and determine the said appeal at such general quarter sessions, or, if they think proper, adjourn the hearing thereof until the next general quarter sessions to be holden for such county, town, or place; and the said justices may, in like manner, if they see cause, mitigate any penalty or penalties, and may order any money to be returned which shall have been paid or levied under any conviction as aforesaid, and may also order and award such costs to be paid by either party to the other, as they shall think and judge reasonable. 51 G. 3. c. 65. appeal to quarter sessions.

Prison and Prisoner. See Gaol, Vol. II.

Prison-breaking.

See tit. Escape, Vol. I. stat. 4 G. 4. c. 64. § 43, 44. tit. Gaols, &c. Vol. II. p. 729. See Rescue, Vol. V.

[3 Ed. 1. c. 15.—1 Ed. 2. st. 2.—4 G. 4. c. 64.]

IT seemeth that at the common law all prison-breaches were felonies, if the party were lawfully in custody for any cause whatsoever. 2 *Haw. c.* 18. § 1. Prison breaking at common law.

But by the following statute, which is called the statute *de frangentibus prisonam*, the severity of the common law is moderated; in the explication of which statute will be contained the whole learning relating to this subject. By statute.

The statute is this: *Concerning prisoners which break prison, the king willeth and commandeth that none that breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convict thereupon, according to the law and custom of the realm.* 1 Ed. 2. st. 2.

Concerning prisoners which break.] Therefore if the prison be broken by a stranger, and not by the prisoner, or by his procurement, this is no felony in the prisoner. *Hale's Sum.* 108. Prison broken by a stranger.

Which break prison.] It seems clear that any place whatsoever wherein a person under a lawful arrest for a supposed crime is restrained of his liberty, whether in the stocks, or street, or in the common gaol, or the house of a constable, or private person, is properly a prison within this statute; for imprisonment is nothing else but a restraint of liberty. 2 *Haw. c.* 18. § 4. What shall be deemed a prison.

And therefore this extendeth as well to a prison in law as a prison in deed. 2 *Inst.* 589.

1 Ed. 2. st. 2. Must be an actual breaking.

But there must be an actual *breaking*; for if the door be open and he goes out, it is not felony, but a misdemeanor only. 2 *Inst.* 589. 2 *Haw.* c. 18. § 9.

But if the prison be fired without the privity of the prisoner, he may lawfully break to save his life. *Hale's Sum.* 108.

Also it seems that no breach of prison will amount to felony, unless the prisoner escape. 2 *Haw.* c. 18. § 12.

How punishable.

That none that breaketh prison shall have judgment of life or member.] That is, shall be guilty of felony. But nevertheless he is still punishable as for a high misprision, by fine and imprisonment; for it cannot be thought the meaning of the statute, in ordaining that such offences shall not be punished as capital ones, to intend that they shall not be punished at all. 2 *Haw.* c. 18. § 21.

3 Ed. 1. c. 15. Not bailable.

Nevertheless, by stat. 3 *Ed.* 1. c. 15. Those who have broken prison are not *bailable* by justices of the peace; and that for two reasons: 1. Because it carries a presumption of guilt. And, 2. Because it is a superadded offence to the former for which they stood committed. 2 *Hale*, 133.

Except the cause for which he was taken and imprisoned did require such judgment.] This is to be intended of a *lawful* cause; and therefore *false imprisonment* is not within this act. 2 *Inst.* 590.

4 G. 4. c. 64. Conveying vizors, &c. into prisons to assist prisoners to escape.

And by stat. 4 *G.* 4. c. 64. § 43. It is enacted, That if any person shall convey or cause to be conveyed into any prison to which this act shall extend, any mask, vizor, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver or cause to be delivered to any prisoner in such prison, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison; every such person shall be deemed to have delivered such vizor or disguise, instrument, or arms, with intent to aid and assist such prisoner to escape, or attempt to escape: and if any person shall, by any means whatever, aid and assist any prisoner to escape, or in attempting to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas for any term not exceeding fourteen years.

Transportation for assisting prisoners to escape.

Method of trial and conviction of offenders making escapes, &c.

§ 44. And to the intent that prosecution for escapes, breaches of prison, and rescues, may be carried on with as little trouble and expence as is possible, it is enacted, that any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping or attempting to escape, or having broken prison, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall, together with due proof of the identity of the person, be sufficient evidence to the court and jury of the nature and fact of the conviction, and of the

species and period of confinement to which such person was sentenced.

Imprisonment is a restraint of a man's liberty under the custody of another, by lawful warrant, in deed, or in law. Lawful warrant is either when the offence appeareth by matter of record, as when the party is taken upon an indictment; or when it doth not appear by matter of record, as when a felony is done, and the offender by a lawful *mittimus* is committed to gaol for the same: But between these two cases there is a great diversity; for in the first case, whether any felony were committed or no, if the offender be taken by force of a *capias*, the warrant is lawful, and if he break prison, it is felony, although no felony were committed; but in the other case, if no felony be done at all, and yet he be committed to prison for a supposed felony, and break prison, this is no felony, for there is no *cause*. 2 *Inst.* 590. **Imprisonment, what.**

So that the cause must be just and not feigned, for things feigned require no judgment: Thus, if a man give another a mortal wound, for which he is committed to prison, and breaketh prison, and the other dieth of the wound within the year, this death hath relation to the stroke; but because relations are but fictions in law, and fictions are not here intended, this prison-breaking is not felony. 2 *Inst.* 591.

So that the offence for which the party was imprisoned must be a capital one at the time of the offence, and not become such by a matter subsequent. 2 *Haw. c.* 18. § 14.

And the cause must be expressed in the *mittimus*, although not so certainly as in an indictment, yet with such a convenient certainty as it may appear judicially that the offence requireth such judgment; as, not for felony generally, but for felony in stealing such a horse, and the like. 2 *Inst.* 591.

But if the offence for which the party is committed be supposed in the *mittimus* to be of such a nature as requires a capital judgment; yet if in the event it be found to be of an inferior nature, and not to require such a judgment, it seems difficult to maintain that the breaking of the prison, on a commitment for it, can be felony; for the words of the statute are, *except the cause for which he was taken and imprisoned did require such judgment;* and here it appears that the offence which is the cause of his imprisonment doth not require such a judgment. 2 *Haw. c.* 18. § 15.

But if a man be committed by lawful warrant for *suspicion* of felony done, if he break prison he may be indicted for that escape, albeit the commitment be for suspicion of felony, and yet no judgment can be given against him for suspicion, but for the felony itself, whereof he is suspected. 2 *Inst.* 592. **Suspicion.**

And an indictment that such a person *feloniously broke the prison* generally is not good; but it ought to rehearse the specialty of the matter, that he being imprisoned for such or such felony broke the prison. 2 *Inst.* 591.

But if the party be only arrested for and in his *mittimus* charged with a crime which doth not require judgment of life or member, as petit larceny, or homicide by self-defence, or by misadventure, and the offence be in truth no greater than the *mittimus* doth suppose it to be, it is clear from the express words of the statute that the breaking of the prison cannot amount to felony. 2 *Haw. c.* 18. § 15.

But if a felony be made by a subsequent statute, and an offender is committed thereupon; if he break prison it is felony. For since all breaches of prison were felonies by the common law, which is restrained by this statute in respect only of imprisonment for offences not capital, when an offence becomes capital, it is as much out of the benefit of the statute, as if it had always been so. *Hale's Sum.* 108.

Also it is said that the party may be arraigned for prison-breaking, before he be convicted of the crime for which he was imprisoned; for that it is not material whether he were guilty of such crime or not; for the words of the statute are, *for which he was taken and imprisoned.* 2 *Haw. c.* 18. § 16.

But if he be first indicted and acquitted of the principal felony, he shall not be indicted for the breach of prison afterwards; for it being clear that he was not guilty of the felony, he is in law as a person never committed for felony, and so his breach of prison is no felony. 1 *Hale*, 612.

But the gaoler shall not be punished as a felon for the party's breach of prison, unless he voluntarily consented to it: but it seems to be a negligent escape in the gaoler, for which he may be punished by fine and imprisonment, because there wanted either that due strength in the gaol, or that due vigilance in the gaoler or his officers, that should have prevented it; and if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners or to retake them that escape. 1 *Hale*, 601.

And therefore if a criminal endeavouring to break the gaol assault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw. c.* 28. § 13.

Indictment for Prison-breaking, by escaping from a Constable.

County of ——— to wit. } *THE jurors for our lord the king upon their oath present, That* A. C. *late of——— yeoman, constable of our said lord the king in and for the town of——— in the said county, on the——— day of ——— in the ——— year of the reign of——— at ——— within the town and constablewick aforesaid in the county aforesaid, did take and arrest one* A. O. *late of ——— labourer, on suspicion of having committed a certain felony, in feloniously taking and leading away one black gelding, the property of——— of the value of——— and thereupon he the said* A. O. *under the custody of him the said* A. C. *the constable aforesaid, was brought before* J. P. *esquire, one of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed; and he the said* J. P. *by his warrant directed to the said* A. C. *and others, did command the said* A. C. *to carry and convey the said* A. O. *to the gaol of our said lord the king at ——— in the county aforesaid, there to be safely kept until he should be lawfully delivered from thence; by virtue of which said warrant he the said* A. O. *was taken and detained by him the said* A. C.*; and he the said* A. C. *was conveying and carrying him the said* A. O. *to the gaol aforesaid, afterwards, to wit,*

on the ——— day of ——— in the year aforesaid, he the said A. O. *of ——— aforesaid, in the county aforesaid, with force and arms, did feloniously break away and escape from and out of the custody of him the said* A. C. *the constable aforesaid, against the will of him the said* A. C. *and against the peace of our said lord the king, his crown and dignity.*

Indictment for breaking out of gaol.

County of ——— to wit. } *THE jurors for our lord the king, upon their oath present, That* A. O. *late of ——— in the county aforesaid, labourer, ——— on the ——— day of ——— in the ——— year of the reign of ——— at ——— aforesaid, in the county aforesaid, was arrested, imprisoned, and detained, in the gaol of our said lord the king for a certain felony by him committed; that is to say, for feloniously taking and leading away one black gelding, the property of ——— of the value of ———; and that he the said* A. O. *on the ——— day of ——— in the year aforesaid, with force and arms, the aforesaid gaol of our said lord the king at ——— aforesaid in the county aforesaid, feloniously did break and thereby did escape from and out of the said gaol, against the peace of our said lord the king, his crown and dignity.*

Prisoners of War.

[52 G. 3. c. 156.]

BY stat. 52 *G.* 3. *c.* 156. every person who shall, from and after the passing of this act, knowingly and wilfully aid or assist any alien enemy of H. M., being a prisoner of war in H. M.'s dominions, whether such prisoner shall be confined as a prisoner of war in any prison or other place of confinement, or shall be suffered to be at large in H. M.'s dominions, or any part thereof, on his parole, to escape from such prison or other place of confinement, or from H. M.'s dominions, if at large upon parole, shall, upon being convicted thereof, be adjudged guilty of felony, and be liable to be transported as a felon for life, or for such term of fourteen or seven years as the court before whom such person shall be convicted shall adjudge. **52 G. 3. c. 156. Punishment of persons aiding prisoners of war to escape.**

§ 2. Every person who shall knowingly and wilfully aid or assist any such prisoner at large on parole in quitting any part of H. M.'s dominions where he may be on his parole, although he shall not aid or assist such person in quitting the coast of any part of H. M.'s dominions, shall be deemed guilty of aiding the escape of such person under the provisions of this act. **Persons guilty of aiding though they do not assist the prisoner in quitting the coast.**

§ 3. If any person or persons owing allegiance to H. M., after any such prisoner as aforesaid hath quitted the coast of any part of H. M.'s dominions in such his escape as aforesaid, shall knowingly and wilfully upon the high seas aid or assist such prisoner in his escape to or towards any other dominions or place, such person **Punishment of persons assisting, on the high seas, prisoners to escape.**

52 G. 3. c. 156. shall also be adjudged guilty of felony, and be liable to be transported as aforesaid: and such offences committed upon the high seas and not within the body of any county, shall and may be enquired of, tried, heard, determined, and adjudged in any county within the realm, in like manner as if such offences had been committed within such county.

Offences may be tried otherwise than under the provisions of this act.

§ 4. This act shall not be deemed or taken to prevent any person committing any offence mentioned in this act from being prosecuted, in such manner as he might by law have been prosecuted if this act had not passed; but nevertheless no person prosecuted otherwise than under the provisions of this act, shall be liable to be prosecuted for the same offence under the provisions hereof; and no person prosecuted under the provisions of this act, shall for the same offence be liable to be otherwise prosecuted.

Process.

Process prior to Indictment, not referable to Appearance in Courts of Record.

Sec 1. *Summons*, Vol. V.
2. *Warrant*, Vol. V.
3. *Search Warrant*, Vol. V.
4. *Commitment*, Vol. I.

Process after Indictment, and referable to Appearance in Courts of Record; and herein.

1. *To compel an Appearance.*
2. *Of Outlawry for Non-appearance.*

1. To compel an Appearance.

[3 Ed. 1. c. 14. — 1 Ed. 4. c. 2. — 8 H. 6. c. 10. — 31 El. c. 3. — 21 J. 1. c. 4. — 29 C. 2. c. 7. — 48 G. 3. c. 58.]

Process by the commission.

BY the commission of the peace, the justices in sessions have power *to make and continue processes upon indictments against the persons indicted, until they can be taken, surrender themselves, or be outlawed.*

1 Ed. 4. c. 2. Process on indictments taken in the tourn.

And by stat. 1 *Ed.* 4. *c.* 2. indictments and presentments taken in the sheriff's tourn shall be delivered to the next sessions, who may award process thereupon in like form as if they had been taken before themselves.

Process by justices out of sessions.

And the law also in several cases in express words directs process to be made by justices out of sessions; and in other cases by necessary implication; and where a statute doth give power to justices out of sessions to enquire, hear and determine, there they may make process to cause the party to come and answer, otherwise they cannot proceed to hear and determine; and this may be either before or after presentment or indictment as the

several statutes do require: before presentment or indictment it is called a *warrant;* after presentment or indictment, it is properly called *process.* *Dalt. c.*193. page 471.

Commonly an indictment, being but an accusation against a man, is of no force but only to put him to answer unto it. And hereof all process hath the name, because it *proceedeth* or goeth out upon former matter either original or judicial. *Lamb.* 519. Process, what.

And it seemeth plain from the nature of the thing, that there can be no need of process where the defendant is present in court, but only where he is absent. 2 *Haw. c.* 27. No need of process, if the party be present.

The process ought to be in the name of the king. And if it issue from the king's bench, it ought to be under the teste of the chief justice; if it issue from any other court, there seems to be the same reason that it ought to be under the teste of the first in the commission. 2 *Haw. c.* 27. § 8. To be in the king's name.

Upon an indictment in sessions (for a misdemeanor, not being felony,) there must be fifteen days between the teste and return of the *venire;* but if the entry be by consent of parties, the *venire* may be returnable *immediatè,* and the trial be the same day. 3 *Salk.* 371. When returnable.

Process on an indictment for felony, by the 25 *Ed.* 3. *c.* 14. is two *capias's* and then an exigent. *Hale's Sum.* 209. 2 *Haw. c.* 27. § 115. Process for felony.

The ordinary processes upon all indictments of trespass against the peace, or of other offences against penal statutes, not being felony, or a greater offence, are as follow: first, if the offender be absent, a *venire facias,* which is but in the nature of a summons to cause the party to appear, shall be awarded, except where other process is directed by some statute. 2 *Haw. c.* 27. § 9. Process under felony.

If it appear by the return of such *venire* that the party hath lands in the county whereby he may be distrained, the *distress infinite* shall be awarded from time to time till he do appear, and by force thereof he shall forfeit on every default so much as the sheriff shall return upon him in issues. But if a *nihil* be returned on such a *venire,* then three *capias's,* that is, a *capias, alias,* and *pluries,* shall issue. 2 *Haw. c.* 27. § 10.

Where the inhabitants of a parish are indicted or presented, the process is, first, a *venire,* then a *distringas.*

By stat. 21 *J.* 1. *c.* 4. by which all popular actions on penal statutes are restrained to their proper counties, the like process in every popular action, bill, plaint, suit, or information on a penal statute, before the quarter sessions, (or higher courts) shall be awarded as in an action of trespass *vi & armis* at the common law. 21 J. 1. c. 4. Process on informations.

And consequently, the process in all such suits must be by attachment or *pone per vadios;* and after by distress *infinite,* where by the return the party appears to be sufficient, otherwise by *capias.* 2 *Haw. c.* 27. § 13.

By stat. 48 *G.* 3. *c.* 58. § 1. It is enacted, that whenever any person is charged with any offence for which he may be prosecuted by indictment or information in the K. B., not being treason or felony, and the same shall be made to appear to any judge of the same court by affidavit, or by certificate of an indictment or in- 48 G. 3. c. 58. When any person charged with an offenc prosecutable b indictment or

48 G.3. c.58.

information (not being treason or felony) on certificate of indictment filed, any judge of K. B. may apprehend and hold the party to bail, &c.

formation being filed against such person in the said court for such offence, such judge may issue his warrant under his hand and seal, and thereby cause such person to be apprehended and brought before him or some other judge of the same court, or before some one justice of the peace, in order to his being bound with two sufficient sureties in such sum as the said warrant shall express, with condition to appear in the said court at the time mentioned in the said warrant, and to answer all and singular indictments or informations for any such offence; and if he shall neglect or refuse to become so bound, such judge or justice may respectively commit him to the common gaol of the county, city, or place where the offence shall have been committed, or where he shall have been apprehended, there to remain until he shall become bound as aforesaid, or be discharged by order of the said court in term time, or of one of the judges of the said court in vacation; and the recognisance to be thereupon taken shall be returned and filed in the said court, and shall continue in force until such person shall have been acquitted of such offence, or in case of conviction shall have received judgment for the same unless sooner ordered by the said court to be discharged; and that where any person, either by virtue of such warrant of commitment, or by virtue of any writ of *capias ad respondendum* issued out of the said court, is now or hereafter shall be committed or detained in any gaol for want of bail, it shall be lawful for the prosecutor to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol, wherein he is or shall be so detained, with a notice indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information as aforesaid, cause an appearance, and also a plea or demurrer to be entered in the said court to such indictment or information, an appearance and the plea of not guilty will be entered thereto in the name of such person; and in case he shall thereupon for the said space of eight days after such delivery of a copy of the indictment or information as aforesaid neglect to cause an appearance, and also a plea of demurrer, to be entered in the said court, to such indictment or information, it shall be lawful for the prosecutor, upon affidavit made and filed in the said court of the delivery of a copy of such indictment or information, with such notice so indorsed to such person, or to such gaoler, keeper, or turnkey, as the case may be, which affidavit may be made before any judge or commissioner of the said court authorised to take affidavits in the said court, to cause an appearance and the plea of not guilty to be entered in the said court to such indictment or information for such person, and such proceeding shall be had thereupon as if the defendant in such indictment or information had appeared and pleaded not guilty according to the usual course of the said court; and if upon the trial thereof the defendant so committed and detained shall be acquitted of all the offences charged there upon him, the judge before whom such trial shall be had, although he may not be one of the judges of the K. B., may order the defendant to be forthwith discharged out of custody as to his commitment as aforesaid, and such defendant shall be thereupon discharged.

Process on an escape.

If a defendant appear to an indictment of felony, and afterwards before issue joined make an escape either from his bail

or from prison, the common *capias*, *alias*, and *pluries*, shall be awarded againt him, unless there had been an *exigent* before, in which case a new exigent shall be awarded. 2 *Haw. c.* 27. § 19. 48 G.3. c.68.

By stat. 3 *Ed.* 1. *c.* 14. The *exigent* shall not be *awarded against accessaries* until the principal shall be attainted. 2 *Haw. c.* 27. § 130. 3 Ed. 1. c. 14. **Process against accessaries.**

By stat. 8 *H.* 6. *c.* 10. *On indictments for treason, felony, or trespass, against persons dwelling in other counties than where the indictment is taken, before any exigent awarded, presently after the first writ of* capias *awarded, and returned, another writ of* capias *shall be awarded, directed to the sheriff of the county whereof the person indicted was supposed to be conversant by the same indictment, returnable before the same justices or others before whom he is indicted, at a certain day continuing the space of three months from the date of the said last writ, where the counties are holden from month to month; and where they are holden from six weeks to six weeks he shall have four months, until the return of the same writ; by which writ of second* capias *it shall be commanded to the same sheriff to take the person indicted by his body, if he can be found within his bailiwick; and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he which is so indicted shall appear before the said justices or others in the county, liberty, or franchise where he is indicted, at the day contained in the said last writ of* capias, *to answer to the king of the felony, treason, or trespass, whereof he is so indicted; after which second writ of* capias *so served and returned, if he which is so indicted come not at the day of the same writ of* capias *returned, the exigent shall be awarded. And every exigent and outlawry otherwise awarded or pronounced shall be void.* 8 H. 6. c. 10. **Process in a foreign country.**

And if any such indictment shall be removed by certiorari, *then before the exigent awarded, presently after such first* capias *returned, another writ of* capias *shall be directed as before, returnable before the king in his bench.*

But this shall not extend to indictments taken in the county of Chester.

Also, if any person be indicted of felony or treason, and at the time of the same felony or treason supposed was conversant within the county whereof the indictment maketh mention, the like process shall be made against the person so indicted, as hath formerly been used; that is, without sending process into the other county.

But every person indicted in the form aforesaid, after he is duly acquit by verdict, shall have an action upon his case, against the procurer of such indictment; and if such procurer be attainted thereof, the plaintiff shall recover treble damages. Which seemeth to be upon account of the distance at which he is supposed to live from the place where he is indicted, and consequently his extraordinary trouble in that behalf.

Dwelling in other counties.] If the defendant be named of *B.* and late of *C.*, there is no need of any *capias* to the sheriff of the county where *C.* lies, because it appears that the defendant is at present conversant at *B.* But if a defendant be named of no certain place at present, but only late of *B.* and late of *C.* and late of *D.*, being all of them in counties different from that

8 H. 6. c. 10. wherein the prosecution is commenced, a *capias* shall go to the sheriff of every one of those counties. 2 *Haw. c.* 27. § 126.

Shall be void.] Not utterly void, but only voidable by writ of error. *Id.*

County of Chester.] But it may be awarded into the counties palatine of *Lancaster* and *Durham;* and it seems that it shall be directed to and returned by the chancellor of *Lancaster*, or bishop of *Durham*; and it hath been said that if he will not return it, the exigent may be awarded as well as if he had returned it; because the court (of the sessions at least) cannot compel him to return it, and the prosecution might be unreasonably delayed, if the proceedings were to be stayed till he should return it. 2 *Haw. c.* 27. § 125. *Hale's Sum.* 209, 210.

Mr. *Marrow* saith, that by the equity of this statute, if a person indicted in one county is imprisoned in another, the justices may award an *habeas corpus* to remove him before themselves. *Lamb.* 526.

To be executed by the sheriff.

Concerning the execution of the process, it is laid down as a general rule, that wherever the king is a party to the suit (as he certainly is to all informations and indictments), the process ought to be executed by the sheriff himself, and not by the bailiff of any franchise, whether it have the clause *non omittas* or not, and whether the defendant be within a franchise or in the county at large; for the king's prerogative shall be preferred to any franchise: but it is said, that this is to be intended only where in the grant of the franchise no mention is made of causes to which the king is a party. 2 *Haw. c.* 27. § 17.

Breaking open doors.

And if the party be in a house, if the doors be shut, and the sheriff (having given notice of his process) demand admittance, and the doors be not opened, he may break open the doors, and enter to take the offender. 2 *Hale*, 202.

In the execution of process against any man in the case of a misdemeanor, it is necessary to demand admittance, before the breaking of the outer door of the house can be legally justified. *Quære*, if so in the case of felony?

Launock v. *Brown*, *E.* 59 *G.* 3. 2 *B. & A.* 592. Trespass for breaking and entering plaintiff's dwelling-house and seizing a gun. Plea, not guilty. At the trial before *Holroyd* J. the defendants, two of whom were constables, and the third the gamekeeper of the manor where the plaintiff resided, justified the trespass under a warrant granted by virtue of the stat. 22 & 23 *Car.* 2. c. 25. § 2. which empowers game-keepers and other persons, authorised by warrant under the hand and seal of any justice of the peace for the county, in the day time to search the houses of unqualified persons suspected of having in their custody guns, &c. for the purpose of destroying game, and to seize, detain, and keep the same, to and for the use of the lord of the manor, or to cut to pieces and destroy them. The plaintiff was proved to be an unqualified person, but on the warrant being produced, several objections were taken to it as being informal. And it further appearing that the *outer* door of the plaintiff's house had been broken open without his having been previously requested to open it, the learned judge was of opinion that the justification was not sufficiently made out, and the plaintiff obtained a verdict. And now, on motion for a rule to shew cause why the verdict should not be set aside, and a nonsuit entered, it was contended that the defendants were justified in obeying the warrant; and that if the warrant was informal, the proper remedy of the plaintiff was not against them, but against the magistrate who had granted it. Then, as to the other objection, that the outer door was broken

open, he contended that here there appeared to have been a misdemeanor on the part of the plaintiff; and that in the execution of criminal process, the outer door may be lawfully broken open. If a previous request be held to be necessary, it will be very inconvenient; for in many criminal cases, as, for instance, felony, it will give the party accused notice that he may make his escape. — *Abbott* C. J. I am of opinion that, in this case, the verdict is right. It is not at present necessary for us to decide how far, in the case of a person charged with felony, it would be necessary to make a previous demand of admittance before you could justify breaking open the outer door of his house; because, I am clearly of opinion that, in the case of a misdemeanor, such previous demand is requisite; and that is sufficient for the determination of the present case. It is reasonable that the law should be so; for if no previous demand is made, how is it possible for a party to know what the object of the person breaking open the door may be? He has a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost. — *Bayley* J. The present verdict is quite right, because, even in the execution of criminal process, you must demand admittance before you can justify breaking open the outer door. That point was mentioned in the judgment of the court, in the case of *Burdett* v. *Abbott*, 14 *East*, 163. *Holroyd* and *Best* Js. concurred. R. R. **Launock v. Brown.**

But by stat. 29 *C.* 2. *c.* 7. § 6. No person on the Lord's day, shall serve or cause to be served any writ, process, or warrant, order or judgment (except in cases of treason, felony, or breach of the peace); but the service thereof shall be void, and the person serving the same shall be liable to answer damages to the party grieved, in the same manner as if he had done it without any writ, process, warrant, order, or judgment at all. See tit. Lord's Day, Vol. III. **29 C. 2. c. 7. Process on a Sunday.**

It seems to be agreed that every suit, whether civil or criminal, and also every process in such suit against jurors, ought to be properly continued from day to day from its commencement to its conclusion, without any the least gap or chasm; the suffering any such gap or chasm is properly called a *discontinuance;* and the continuing the suit by improper process, (as by a *capias* instead of a *distringas*,) or by giving the parties an illegal day, is properly called a *miscontinuance;* and if the justices before whom the matter is depending, do not come on the day to which it is continued, it is said to be *put without day*, and cannot be revived without a re-summons on re-attachment. 2 *Haw. c.* 27. § 89. *et seq.* **Process discontinued.**

Now process may be discontinued several ways. As, 1. Where the second is not tested on the very same day on which the first is returnable. 2. Where there is a sessions intervening between the teste and the return of a *capias*, that the defendant may not be imprisoned an unreasonable time. But it is no objection to an *exigent* that it is not returnable the next sessions, because it must allow time for five counties to be holden between its teste and return. 3. Where, after issue or demurrer, the Court gives the party a day to a distant sessions, without making any continuance to that immediately following. 4. Where the sessions to which the suit is continued is adjourned, and the suit is not adjourned

accordingly. 5. Where any of the parties are described in any continuance of the suit, whether on the roll, or by process by a name or addition variant from those in the original, though only in one letter. 6. Where a *venire* or *distringas* is issued, without any award on the roll to warrant them. 2 *Haw. c.* 27. § 90. *et seq.*

And it seems generally to be taken as an undoubted principle, that a discontinuance by suffering a total chasm in the proceedings, whether on the roll or in the process, by not giving a fresh continuance instantly upon the determination of the precedent, shall never be aided by any appearance of pleading over; but it is holden by the greater number of authorities that if the original be good, and the defendant present in court, he shall be compelled to answer to such original, let the process whereon he came in, or the execution of it, be never so erroneous or defective, so that it never were discontinued; for the end of process is to compel an appearance, and the end being served, and a legal charge appearing against the defendant no way discontinued, the law will not so far regard a slip in the process, as to let the defendant out of court, in order only to have him brought in again in better form. 2 *Haw. c.* 27. § 107.

Process stayed by putting in bail. The processes (as well of *capias* as of outlawry) may be stayed by a *supersedeas* issuing from other justices (out of sessions) testifying that the party hath come before them, and hath found sureties for his appearance to answer to the indictment, or to pay his fine. *Dalt. c.* 193.

And it seemeth that even any one justice may bail persons indicted at the sessions for any offence under the degree of felony; for that the statutes relating specially to the power of justices in granting bail do not in this case seem to take away the power which one justice had before the making of the said statutes. 2 *Haw. c.* 15. § 54.

2. Of Outlawry for Non-appearance.

[31 Eliz. c. 3.—3 & 4 W. c. 9.—4 & 5 W. c. 18. c. 22.]

Process of outlawry. Judgment of outlawry is given by the coroner, at the fifth county court, upon the party's not appearing to the *exigent* (which is a writ commanding the sheriff to cause the defendant (*exegi*) to be *demanded* from county court to county court until he be outlawed:) And such judgment is entered thus, *Therefore by the judgment of the coroners of our lord the king of the county aforesaid he is outlawed.* 2 *Haw. c.* 48. § 21.

Meaning of the word outlaw. The word *outlaw* (*utlaghe*) *utlagatus* cometh not immediately from the Latin *lex*, but is derived to us through the Saxon *laga*, which signifieth *law*. And a person outlawed signifies one that is out of the protection of the king, and out of the aid of the law.

A woman outlawed. And a man which is outlawed is called outlawed; but a woman which is outlawed is called waved, and not *utlagata;* for that women are not sworn in leets or tornes, as men at the age of twelve or more are; and therefore men may be called *utlagati;* that is, *extra legem positi*, but women are *waviatæ*, that is, *derelictæ*, left out or not regarded, because they were not sworn to the law; wherein it is to be noted, that of ancient time a man

was not said to be within the law that was not sworn to the law, which is intended of the oath of allegiance in the leet. 1 *Inst.* 122.

Hence it is, that a man under the age of twelve years cannot be outlawed. 1 *Inst.* 122.

Process of outlawry lies in all indictments of treason or felony, and on all returns of rescous; and also on all indictments of trespass with force and arms; and it seems probable that it lies on an indictment of conspiracy or deceit, or any other crime of a higher nature than a trespass with force and arms; but not on any indictment for a crime of an inferior nature. And it seems agreed that it lies not on any action on a statute, unless it be given by such statute, either expressly, as in the case of a *præmunire,* or impliedly, as where a recovery is given by an action wherein such process lay before, as on a writ of trespass for a forcible entry, on stat. 8 *H.* 6. *c.* 9., because the statute expressly gives a recovery by such a writ, and such process lies in it by the common law. 2 *Haw. c.* 27. § 113. For what outlawry may be.

By stat. 31 *Eliz. c.* 3. In every *action personal,* wherein any exigent shall be awarded out of any court, one writ of proclamation shall be awarded out of the same court, having day of teste and return as the writ of exigent shall have, directed and delivered of record to the sheriff where the defendant dwells; which writ of proclamation shall contain the effect of the action; and the sheriff shall make one proclamation in the open county court, and another at the general quarter sessions where the defendant dwells, and another a month at least before the *quinto exactus,* by virtue of the said writ of exigent, at or near the most usual door of the church or chapel where the defendant shall be dwelling at the time of the exigent awarded, upon a *Sunday* immediately after divine service. 31 E. c. 3. Outlawry proclaimed at the sessions.

Also by stat. 4 & 5 *W.* 3. *c.* 22. § 4. upon issuing any exigent out of any of the king's courts against any person for a *criminal* matter, before judgment or conviction, there shall also issue a writ of proclamation, bearing the same teste and return, where the person in the record of proceeding is mentioned to inhabit, according to the form of stat. 31 *El. c.* 3., which writ of proclamation shall be delivered to the sheriff three months before the return of the same. 4 & 5 W. 3. c. 22.

If there are two coroners in a county, or more, one may execute the writ, as in case of an exigent, but the return must be in the name of the coroners. 2 *Hale,* 56 Return of the outlawry.

And the return of the outlawry must be certain: it must shew where the county court was held, and in what county; and must return the day, and year of the king, to every *exactus.* 2 *Hale,* 203.

Also the sheriff's name and office must be subscribed to the return of the exigent. 2 *Hale,* 204.

It is said that the justices in sessions cannot issue a *capias utlagatum,* but must return the record of the outlawry into the K. B., and the process of *capias utlagatum* shall issue. 2 *Hale,* 52. Capias utlagatum.

But in *T.* 10 *J.* 1. the opinion of all the court of Common Pleas was, that if one be outlawed before the justices of the peace on an indictment of felony, they may award a *capias utlagatum,* and so

was the opinion of *Periam* chief baron, and all the court of exchequer; for they, that have power to award process of outlawry, have also power to award a *capias utlagatum*, as incident to their authority and jurisdiction. 12 *Rep.* 103.

Consequences of outlawry.

If a person be outlawed at the suit of one man, all men shall take advantage of this personal disability. 1 *Inst.* 128.

But such disability abateth not the writ, but only disableth the plaintiff, until he obtain a charter of pardon. 1 *Inst.* 128.

For treason or felony.

Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared and judgment had been given against him, as long as the outlawry is in force. 2 *Haw.* c. 48. § 22.

For an inferior offence.

But the outlawry for a misdemeanor doth not enure as a conviction for the offence, as it doth in cases of treason and felony: but as a conviction of the contempt for not answering, which contempt is therefore punished, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. *R.* v. *Tippen*, 2 *Salk.* 494.

Goods forfeited from the time of issuing the exigent.

The very issuing of the exigent, in case of treason or felony, gives to the king the forfeiture of the goods of the party from the time of the teste of the writ of exigent: and the forfeiture by the exigent awarded stands, although the indictment be quashed, until there be a judgment of reversal on a writ of error: because the king's title being of record must be awarded by a record. 2 *Hale*, 204, 205.

Lands forfeited from the time of the outlawry.

And as the award of the exigent gives the forfeiture of the goods, so the outlawry gives the forfeiture or loss of the lands of the party outlawed; to wit, in case of outlawry of treason his lands are forfeited to the king, of whomsoever they are held; and in case of outlawry of felony to the lord by escheat, of whom they are immediately holden. 2 *Hale*, 206.

But the outlawry must be first returned.

But it must be remembered that the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any escheat; but it must be returned by the sheriff, with the writ of *exigi facias*, and the return indorsed. 2 *Hale*, 206. Or else it must be removed by *certiorari*; for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. 1 *Inst.* 288.

And after inquisition found.

And by the outlawry all *personal* chattels are vested in the king by forfeiture; but *real* chattels, or freehold estates, are not vested in the king till after inquisition found. 3 *Salk.* 262.

Whether it is lawful to kill an outlaw.

In ancient times no man could have been outlawed but for felony, the punishment whereof was death; and upon this account an outlawed man was called *wolfeshead*; because he might be put to death by any man, as a wolf, that hateful beast, might. But in the beginning of the reign of K. *Ed.* 3. it was resolved by the judges, for avoiding of inhumanity, and of effusion of christian blood, that it should not be lawful for any man but the sheriff, having lawful warrant, to put to death any man outlawed, though it were for felony; and if he did, he shall undergo such pain of death, as if he had killed any other man: and so the law continues to this day. 1 *Inst.* 28.

Judges of assize may award execution of per-

If a man be indicted before justices of the peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaol-delivery may award execution of this prisoner; for they are

constituted to deliver the gaol. 4 *Inst.* 166. *Hale's Sum.* 158. 2 *Hale*, 35. sons outlawed before justices of the peace.

Where clergy is allowable, it shall be as much allowed to one who is outlawed, as to one who is convicted by verdict or confession. 2 *Haw.* c. 33. § 27. Clergy in cases of outlawry.

But a statute taking the benefit of clergy from those who shall be found guilty doth not thereby take it from those who are outlawed. 2 *Haw.* c. 33. § 28.

But by stat. 3 & 4 *W.* 3. *c.* 9. § 2. *If any person be indicted of any offence, for which, by any former statute, he is excluded from clergy upon conviction, if he shall be outlawed thereupon, he shall not have his clergy.* 3 & 4 W. 3. c. 9.

By any former statute] Hereby it appears that this extends not to offences made felonies by statutes *subsequent* to this statute. 2 *Haw.* c. 33. § 49.

Where a person is outlawed, the defendant may shew all the matter and outlawry returned of record, and demand judgment if he shall be answered, because he is out of the law, to sue an action during the time that he is outlawed. 1 *Inst.* 128. Person outlawed cannot be plaintiff.

It seems to be a good challenge of a juror, that he is outlawed either for a criminal matter, or as some say, in a personal action; but not a principal challenge, but only to the favour, unless the record of the outlawry be produced. 2 *Haw.* c. 25. § 16. c. 43. § 25. Cannot be a juror.

But it seems clear that outlawry in a *personal* action is not a good exception against a witness, as it is against a juror. 2 *Haw.* c. 46. § 21. May be a witness.

An outlawed person may make a will, and have executors or administrators. *Cro. El.* 575. May make a will.

And an executor may reverse the outlawry of the testator, where he was not lawfully outlawed. 1 *Leon.* 325.

Outlawry may be reversed several ways; as, by procuring a *supersedeas*, and delivering it to the sheriff before the *quinto exactus*, or by shewing any matter apparent on record which makes the outlawry erroneous, as the want of an original, or the omission of process, or want of form in a writ of proclamation, or a return by a person appearing not to be sheriff, or a variance between the original and exigent or other process, or by a misnomer, or want of addition. 2 *Haw.* c. 50. Reversing outlawry.

And upon a writ of error upon an outlawry in felony, the party outlawed must render himself in custody, and pray the allowance of the writ of error in person; and if the outlawry be reversed, he shall be put to answer the indictment. 2 *Hale*, 209. In what case the party must appear personally to reverse it.

But by stat. 4 & 5 *W.* 3. *c.* 18. one outlawed, except for treason or felony, need not appear in person to reverse an outlawry, but may appear by attorney. 2 *Salk.* 496. 4 & 5 W. 3. c. 18.

There is another kind of process out of a court of record against offenders, called *attachment*, which is generally for contempt; which belongs to title **Attachment**, Vol. I. Other kinds of process.

The process against *jurors* may be seen in the title **Jurors**, *ante*. And the process against *witnesses* in title **Evidence**, Vol. I.

Forms of Processes; and First of a *Venire.*

GEORGE *the Fourth, by the grace of God, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith. To the sheriff of the county of* Westmorland, *greeting. We command you that you omit not, by reason of any liberty in your bailiwick, but that you cause* A. O. *of* ———, *in your said county, yeoman, to come before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county, committed at* ———, *in your said county, on the* ——— *day of* ——— *next ensuing, to answer unto us upon certain articles presented against him the said* A. O. *And have you there then this precept. Witness* J. P. *and* K. P. *at* ——— *the* ——— *day of* ———, *in the* ——— *year of our reign.*

And upon this *venire*, if the defendant be returned sufficient, and maketh default, then a *distringas* shall be awarded, and so the same process infinite, until he come in: but if a *nihil habet* be returned at the first, then after the *venire* there shall go out a *capias, alias, pluries*, and *exigent. Dalt. Sher.* 160.

Form of a *Distringas.*

GEORGE *the Fourth, by the grace of God, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith. To the sheriff of the county of* ———; *greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and distrain* A. O. *of* ——— *in your county, yeoman, by all his lands and tenements,* &c.; *and that you answer for the issues thereof,* &c. *and that you have his body before our justices assigned* [and so on as before in the *venire.*]

But if a *nihil* (as hath been said) be returned at first upon the *venire facias*; then a *capias* shall issue thus:—

GEORGE *the Fourth, by the grace of God, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith. To the sheriff of the county of* ———, *greeting. We command you that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and take* A. O. *of* ——— *in your county, yeoman, if he shall be found in your bailiwick, and him cause to be safely kept, so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at* ———, *in your county, on the* ——— *day of* ——— *next ensuing, to answer unto us concerning divers trespasses, contempts, and offences, of which he is indicted. And have you there then this writ. Witness* J. P. *and* K. P. *at* ———, *the* ——— *day of* ———, *in the* ——— *year of our reign.*

At which day A. S. *knight, sheriff of the county aforesaid, returned that he is not found in his bailiwick, and he did not come. Therefore it is commanded as before.*

Note; The cause why the entry is made, *and he did not come*, is, because the party may appear voluntarily, and so avoid the attachment or arrest of his body.

The *Alias Capias.*

GEORGE ——— *To the sheriff* ——— *We command you as we before commanded you, that you omit not* ——— (as before.)

At which day ——— (as before); *and he did not come. Therefore it is commanded to the sheriff, as it hath been often commanded*, &c.

The *Pluries Capias.*

GEORGE, &c. *The sheriff*, &c. *We command you, as we have often commanded you, that you omit not* (as before.)

At which day A. S., *knight, the sheriff aforesaid, returned, that the aforesaid* A. O. *is not found in his bailiwick, and he did not come. Therefore it is commanded, that you cause to be demanded*, &c.

The *Exigent.*

GEORGE, &c. *To the sheriff*, &c. *greeting. We command you that you cause* A. O. *of* ———, *in your county, yeoman, to be* demanded, *until by the law and custom of our kingdom of* England *he be outlawed, if he shall not appear; and if he shall appear, that then you take him and cause him to be safely kept so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in your said county committed, at the general quarter sessions of the peace of your county, next after the feast of* ——— *next ensuing, to be held, wheresoever in the same county the said sessions shall happen to be holden, to answer unto us of divers trespasses, contempts, and offences, of which he is indicted. And have you then there this writ. Witness Sir* J. P., *baronet, at* ———, *in the said county, the* ——— *day of* ———, *in the* ——— *year of our reign.*

At which day A. S., *knight, sheriff of the county aforesaid, returned, that at the county holden at* ———, *the* ——— *day of* ———, *in the* ——— *year of the reign of our lord the king, that now is, and so at four other counties then next following there holden, the aforesaid* A. O. *was demanded, and did not appear. Therefore, by the judgment of the coroner of our said lord the king, in the county aforesaid, he was outlawed.*

The *Capias Utlagatum.*

GEORGE, &c. *To the sheriff*, &c. *greeting. We command you that you omit not, by reason of any liberty in your county, but that you take* A. O., *late of* ———, *in your county, labourer, if he shall be found within your county, and him cause safely to be kept, so that you have his body before the keepers of our peace and our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors in your county committed, at*

——— *the* ——— *day of* ———, *to stand right in our court before our justices aforesaid, upon a certain outlawry against him the said* A. O. *promulgated, at our suit, for certain felonies* (or *trespasses*) *whereof he is indicted. And have you then there this writ. Witness*, &c.

Profaneness. Blasphemy, Vol. I.

Promissory Notes.

[17 G.3. c.30.—31 G.3. c.25.—37 G.3. c.28. c.32. c.61.—43 G.3. c.139.—48 G.3. c.88.—50 G.3. c.35.—53 G.3. c.108.—55 G.3. c.6.—55 G.3. c.184.—56 G.3. c.21.—3 G.4. c.70.]

BY stat. 15 *G*.3. *c*.51. various provisions were made to restrain the negociation of promissory notes and inland bills of exchange, under a limited sum in *England*; but doubts have arisen as to the power of justices of the peace to hear and determine offences under that act.

48 G. 3. c. 88. Promissory notes for less than 20s. void.

By stat. 48 *G*. 3. *c*.88. § 1. the said act of 15 *G*.3. was repealed, and by § 2. it is enacted, that all promissory or other notes, bills of exchange or drafts, or undertakings in writing, being negotiable or transferable for the payment of any sum or sums of money, or any orders, notes, or undertakings in writing, being negotiable or transferable, for the delivery of any goods, specifying their value in money, less than the sum of twenty shillings in the whole, heretofore made or issued, or which shall hereafter be made or issued, shall after the 1st day of *October* 1808, be and the same are hereby declared to be absolutely void and of no effect; any law, statute, usage, or custom, to the contrary thereof in anywise notwithstanding.

Persons uttering such notes or bills for less than 20s. &c. shall forfeit not exceeding 20*l*. nor less than 5*l*.

§ 3. If any person shall after the 1st day of *July* 1808, by any art, device, or means whatsoever, publish or utter any such notes bills, drafts, or engagements as aforesaid, for a less sum than 20*s*. or on which less than the sum of 20*s*. shall be due, and which shall be in anywise negotiable or transferable, or shall negociate or transfer the same, every such person shall forfeit and pay, for every such offence, any sum not exceeding 20*l*. nor less than 5*l*., at the discretion of the justice of the peace who shall hear and determine such offence.

Justices empowered to hear and determine offences.

§ 4. It shall be lawful for any justice of the peace, acting for the county, riding, city, or place within which any offence against this act shall be committed, to hear and determine the same in a summary way, at any time within 20 days after such offence shall have been committed; and such justice upon any information exhibited or complaint made upon oath in that behalf, shall summon the party accused, and also the witnesses on either side, and shall examine into the matter of fact, and upon due proof made thereof, either by the voluntary confession of the party or by the oath of one credible witness or otherwise, (which oath such jus-

tice is hereby authorised to administer) shall convict the offender, and adjudge the penalty for such offence. 48 G.3. c.88.

§ 5. If any person shall be summoned as a witness to give evidence before such justice either on the part of the prosecutor or the person accused, and shall neglect or refuse to appear at the time or place to be for that purpose appointed without a reasonable excuse for such his neglect or refusal, to be allowed by such justice, then such person shall forfeit for every such offence, the sum of 40*s*., to be levied and paid in such manner and by such means as are directed for recovery of other penalties under this act. Penalty on witnesses not attending.

§ 6. Enacts, that the justice before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out, in the manner and form following: (that is to say),

BE it remembered, that on the —— day of ———, in the year of our Lord — A. B., *having appeared before me* [or, *us*] *one* [or more] *of his majesty's justices of the peace* [as the case may be] *for the county, riding, city, or place* [as the case may be], *and due proof having been made upon oath by one or more credible witness or witnesses, or by confession of the party* [as the case may be] *is convicted of* ——— [specifying the offence]. *Given under my hand and seal* [or, *our hands and seals*] *the day and year aforesaid.* Form of conviction.

which conviction the said justice shall cause to be returned to the then next general quarter sessions of the peace of the county, riding, city, or place where such conviction was made, to be filed by the clerk of the peace, to remain and be kept among the records of such county, riding, city, or place. Convictions to be returned to the quarter sessions.

§ 7. Provides, that it shall be lawful for any clerk of the peace for any county, riding, city, or place, and he is hereby required upon application made to him by any person or persons for that purpose, to cause a copy or copies of any conviction or convictions filed by him under the directions of this act, to be forthwith delivered to such person or persons upon payment of one shilling for every such copy. Clerks of the peace to give copies of convictions on payment of 1*s*.

§ 8. Enacts, that the pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction against this act, shall be forthwith paid by the person convicted, as follows: one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed; and in case such person shall refuse or neglect to pay the same, or to give sufficient security to the satisfaction of such justice to prosecute any appeal against such conviction, such justice shall by warrant under his or their hand and seal, or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and which said warrant of distress the said justice shall cause to be made out in the manner and form following: (that is to say,) How penalties shall be levied and applied.

8 G. 3. c. 88. Form of the warrant of distress.

To the Constable, Headborough, or Tythingman of ——.

WHEREAS A. B., *of* ——, *in the county of* ——, *is this day convicted before me* [or *us*] *one* [or more] *of his majesty's justices of the peace* [as the case may be] *for the county of* ——, [or, *for the* —— *riding of the county of* York, *or for the town, liberty, or district of* ——, as the case may be] *upon the oath of* —— *or* ——, *a credible witness or witnesses* [or, *by confession of the party*, as the case may be] *for that the said* A. B. *hath* [here set forth the offence] *contrary to the statute in that case made and provided, by reason whereof the said* A. B. *hath forfeited the sum of* ——, *to be distributed as herein is mentioned, which he hath refused to pay: these are, therefore, in his majesty's name, to command you to levy the said sum of* —— *by distress of the goods and chattels of him the said* A. B., *and if within the space of five days next after such distress by you taken, the said sum, together with the reasonable charges of taking the same, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one-half of the said sum of* —— *to* ——, *of* ——, *who informed me* [or, *us*, as the case shall be] *of the said offence, and the other half of the said sum of* —— *to the overseer of the poor of the parish, township, or place where the offence was committed, to be employed for the benefit of such poor, returning the overplus* [if any] *upon demand, to the said* A. B., *the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said* A. B. *whereon to levy the said sum of* ——, *that then you certify the same to me*, [or, *us*, as the case shall be] *together with this warrant. Given under my hand and seal* [or *our hands and seals*] *the* —— *day of* ——, *in the year of our Lord* ——.

Security may be taken for appearance.

§ 9. Enacts, that it shall be lawful for such justice to order such offender to be detained in safe custody until return may conveniently be had and made to such warrant of distress, unless the party so convicted shall give sufficient security, to the satisfaction of such justice for his appearance before the said justice on such day as shall be appointed by the said justice for the day of the return of the said warrant or distress (such day not exceeding five days from the taking of such security); which security the said justice is hereby empowered to take by way of recognisance or otherwise.

Offenders may be committed for want of distress.

§ 10. Enacts, that if upon such return no sufficient distress can be had, the said justice shall and may commit such offender to the common gaol or house of correction of the county, riding, division or place where the offence shall be committed, for the space of three calendar months, unless the money forfeited shall be sooner paid, or unless or until such offender, thinking him or herself aggrieved by such conviction, shall give notice to the informer that he or she intends to appeal to the justices of the peace at the next general quarter sessions of the peace to be holden for the county, riding, or place wherein the offence shall be committed, and shall enter into recognisance before some justice, with two sufficient sureties conditioned to try such appeal, and to abide

the order of and pay such costs as shall be awarded by the justices at such quarter sessions (which notice of appeal, being not less than eight days before the trial thereof, such person so aggrieved is hereby empowered to give); and the said justices at such sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognisance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such quarter session shall be conclusive. 48 G. 3. c. 88.

§ 11. Enacts, that no person shall be disabled from being a witness in any prosecution for any offence against this act, by reason of his being an inhabitant of the parish wherein such offence was committed. Parishioners admitted witnesses.

§ 12. Provides, that no proceedings to be had, touching the conviction of any offender against this act, shall be quashed for want of form, or be removed by writ of *certiorari* or any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster*. Convictions n[ot] to be removed.

§ 13. Enacts, that if any action shall be commenced against any person for any thing done in pursuance of this act, such action shall be commenced or prosecuted within three calendar months after the fact committed: and the same shall be brought within the county where the fact was committed; and the defendant may plead the general issue, &c.; and if any such action shall be brought after the time limited, or laid in any other place than as aforementioned, the jury shall find for the defendant, &c.; or if the plaintiff shall become nonsuit, or if upon demurrer judgment shall be given against the plaintiff, the defendant shall recover treble costs. General issue may be plead[ed]. Treble costs.

By stat. 17 *G.* 3. *c.* 30. it is enacted, that all promissory or other notes, bills of exchange, or draughts, or undertakings in writing, being negotiable or transferable, for the payment of 20*s.* or above that sum, and less than 5*l.* or on which 20*s.* or above, and less than 5*l.* shall remain undischarged, shall (1) specify the names and places of abode of the persons respectively to whom, or to whose order, the same shall be made payable; and (2) shall bear date before or at the time of drawing or issuing thereof, but not on any day subsequent thereto; and (3) shall be made payable within twenty-one days next after the day of the date thereof; and shall not be transferable or negotiable after the time thereby limited for payment; and (4) every indorsement thereon shall be made before the expiration of that time, and shall bear date at or not before the time of making thereof, and shall specify the name and place of abode of the person to whom or to whose order the money is to be paid; otherwise such note, bill, draught, or undertaking shall be void. 17 G. 3. c. 3[0]. Promissory notes, &c. of 20s. and und[er] 5l.

By stat. 3 *G.* 4. *c.* 70. reciting that stat. 17 *G.* 3. *c.* 30. was passed for restraining, for a limited time, the negociation of promissory notes and inland bills of exchange for 20*s.*, or any sum above that sum, and under 5*l.* and was made perpetual by stat. 27 *G.* 3. *c.* 16., and that by stat. 37 *G.* 3. *c.* 32. the said recited act of 17 *G.* 3. *c.* 30., so far as the same relates to the making void of promissory notes, drafts, or undertakings in writing, payable on demand to the bearer thereof, 3 G. 4. c. 70.

3 G.4. c.70.

Recited act of 37 G.3. c.32. so far as suspends the recited act of 17 G.3. c.30. continued until 5th *January* 1833.

for any sum less than the sum of *5l.* in the whole, and also to the restraining the publishing or uttering and negociating of any such notes, drafts, or undertakings, as aforesaid, was suspended until the 1st day of *May* then next: and that the said act of the 37 *G.* 3. hath by several subsequent acts been continued, and is now in force, until two years after the expiration of the restriction upon payments in cash by the bank of *England;* and that it is expedient that the same should be further continued; it is enacted, that the said act of the 37 *G.* 3., so far as the same suspends the said act of the 17th year of the reign of his late majesty, shall be further continued until the 5th of *January* 1833.

37 G.3. cc.32. 51. Power of the justices.

And by stat. 37 *G.* 3. *c.* 32. § 3. If the person liable to pay the same shall fail to make full payment in money of the sum therein mentioned, or any part thereof [for seven days, 37 *G.* 3. *c.* 61. § 2.] after demand by the holder, one justice, on complaint by such holder, may summon such person refusing to pay; and on his appearance, or in default, on proof on oath of such summons having been duly served, may hear and determine the same, and may award such sum to be paid, together with the costs, not exceeding 20*s.*, as so him shall seem meet; and if not paid upon demand, may levy the same by distress, together with all costs attending such distress.

Which notes, bills, draughts, or undertakings and indorsements, may be in the form or to the effect following:

[Place, day, month, year.] *Twenty-one days after date, I promise to pay to* A. B., *of* ———, *or his order, the sum of* ———, *for value received by* C. D.
Witness,
E. F.

Indorsement *toties quoties.*

[Place, day, month, year.] *Pay the contents to* G.H., *of* ——, *or his order.*
Witness
J. K. A. B.

If it is upon advice, say, ——— *Twenty-one days after date, pay to* A. B. *of* ———, *or his order, the sum of* ———, *value received, as advised by* C. D. (*a*)

[The publishing, uttering, or negociating notes, bills of exchange, drafts, or undertakings, contrary to this act, is prohibited and restrained under the like penalties as for offences against the former act; so that the impracticability of recovering the said penalties is alike in both cases.]

55 G.3. c.184. Stamp duties.

By stat. 55 *G.* 3. *c.* 184. The stamp duties upon bills of exchange, drafts, promissory notes, &c., imposed by former acts, were repealed, and the undermentioned duties imposed in lieu thereof:—

(*a*) By stat. 37 *G.* 3. *c.* 28. after 2d *March*, 1797, all notes issued by the bank of *England* payable to bearer for less than *5l.* shall be valid.

Inland bill of exchange, draft, or order to the bearer, or to order, either on demand or otherwise, not exceeding two months after date, or sixty days after sight, of any sum of money,

		£	s.	d.
Amounting to 40s.	and not exceeding 5*l*. 5*s*.	0	1	0
Exceeding 5*l*. 5*s*.	and not exceeding 20*l*.	0	1	6
Exceeding 20*l*.	and not exceeding 30*l*.	0	2	0
Exceeding 30*l*.	and not exceeding 50*l*.	0	2	6
Exceeding 50*l*.	and not exceeding 100*l*.	0	3	6
Exceeding 100*l*.	and not exceeding 200*l*.	0	4	6
Exceeding 200*l*.	and not exceeding 300*l*.	0	5	0
Exceeding 300*l*.	and not exceeding 500*l*.	0	6	0
Exceeding 500*l*.	and not exceeding 1000*l*.	0	8	6
Exceeding 1000*l*.	and not exceeding 2000*l*.	0	12	6
Exceeding 2000*l*.	and not exceeding 3000*l*.	0	15	0
Exceeding 3000*l*.		1	5	0

Inland bill of exchange, draft, or order for the payment to the bearer, or to order, at any time exceeding two months after date, or sixty days after sight, of any sum of money,

		£	s.	d.
Amounting to 40s.	and not exceeding 5*l*. 5*s*.	0	1	6
Exceeding 5*l*. 5*s*.	and not exceeding 20*l*.	0	2	0
Exceeding 20*l*.	and not exceeding 30*l*.	0	2	6
Exceeding 30*l*.	and not exceeding 50*l*.	0	3	6
Exceeding 50*l*.	and not exceeding 100*l*.	0	4	6
Exceeding 100*l*.	and not exceeding 200*l*.	0	5	0
Exceeding 200*l*.	and not exceeding 300*l*.	0	6	0
Exceeding 300*l*.	and not exceeding 500*l*.	0	8	6
Exceeding 500*l*.	and not exceeding 1000*l*.	0	12	6
Exceeding 1000*l*.	and not exceeding 2000*l*.	0	15	0
Exceeding 2000*l*.	and not exceeding 3000*l*.	1	5	0
Exceeding 3000*l*.		1	10	0

Inland bill, draft, or order for the payment of any sum of money, though not made payable to the bearer, or to order, if the same shall be delivered to the payee, or some person on his or her behalf	*The same duty as on a bill of exchange for the like sum payable to bearer or order.*
Inland bill, draft, or order for the payment of any sum of money, weekly, monthly, or at any other stated periods, if made payable to the bearer, or to order, or if delivered to the payee, or some person on his or her behalf, where the total amount of the money thereby made payable shall be specified therein, or can be ascertained therefrom	*The same duty as on a bill payable to bearer or order on demand for a sum equal to such total amount.*
And where the total amount of the money thereby made payable shall be indefinite	*The same duty as on a bill on demand for the sum therein expressed only.*

55 G.3. c.184. And the following instruments shall be deemed and taken to be inland bills, drafts, or orders for the payment of money, within the intent and meaning of this schedule; *videlicet:*

All drafts or orders for the payment of any sum of money by a bill or promissory note, or for the delivery of any such bill or note, in payment or satisfaction of any sum of money; where such drafts or orders shall require the payment or delivery to be made to the bearer, or to order, or shall be delivered to the payee, or some person on his or her behalf.

All receipts given by any banker or bankers, or other person or persons, for money received, which shall entitle, or be intended to entitle, the person or persons paying the money, or the bearer of such receipts, to receive the like sum from any third person or persons.

And all bills, drafts, or orders, for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, if the same shall be made payable to the bearer, or to order, or if the same shall be delivered to the payee, or some person on his or her behalf.

Foreign bills of exchange (or bill of exchange drawn in but payable out of *Great Britain*) if drawn singly and not in a set - - - — *The same duty as on an inland bill of the same amount and tenor.*

Foreign bill of exchange, drawn in sets according to the custom of merchants, for every bill of each set, where the sum made payable thereby shall not exceed 100*l*. - - - - - - £0 1 6

	£	s.	d.
Exceeding 100*l*. and not exceeding 200*l*. -	0	3	0
Exceeding 200*l*. and not exceeding 500*l*. -	0	4	0
Exceeding 500*l*. and not exceeding 1000*l*. -	0	5	0
Exceeding 1000*l*. and not exceeding 2000*l*. -	0	7	6
Exceeding 2000*l*. and not exceeding 3000*l*. -	0	10	0
Exceeding 3000*l*. - - - - - -	0	15	0

Exemptions from the preceding and all other Stamp Duties.

All bills of exchange, or bank post bills, issued by the governor and company of the bank of England.

All bills, orders, remittance bills, and remittance certificates, drawn by commissioned officers, masters and surgeons in the navy, or by any commissioner or commissioners of the navy, under the authority of the act passed in the thirty-fifth year of the reign of his majesty George *the third, for the more expeditious payment of the wages and pay of certain officers belonging to the navy.*

All bills drawn, pursuant to any former act or acts of parliament, by the commissioners of the navy, or by the commissioners for

victualling the navy, or by the commissioners for managing the transport service, and for taking care of sick and wounded seamen, upon, and payable by the treasurer of the navy. 55 G.3. c.184.

All drafts or orders for the payment of any sum of money to the bearer on demand, and drawn upon any banker or bankers, or any person or persons acting as a banker, who shall reside or transact the business of a banker within ten miles of the place where such drafts or orders shall be issued, provided such place shall be specified in such drafts or orders; and provided the same shall bear date on or before the day on which the same shall be issued; and provided the same do not direct the payment to be made by bills or promissory notes.

All bills for the pay and allowances of H. M's land forces, or for other expenditures liable to be charged in the public regimental or district accounts, which shall be drawn according to the forms now prescribed, or hereafter to be prescribed by H. M.'s orders, by the paymasters of regiments or corps, or by the chief paymaster, or deputy paymaster, and accountant of the army depôt, or by the paymasters of recruiting districts, or by the paymasters of detachments, or by the officer or officers authorised to perform the duties of the paymastership during a vacancy, or the absence, suspension, or incapacity of any such paymaster as aforesaid; save and except such bills as shall be drawn in favour of contractors or others, who furnish bread or forage to H. M.'s troops, and who by their contracts or agreements shall be liable to pay the stamp duties on the bills given in payment for the articles supplied by them.

Promissory note, for the payment, to the *bearer on demand*, of any sum of money,

Not exceeding one pound and one shilling	-	£0	0	5
Exceeding 1*l*. 1*s*. and not exceeding 2*l*. 2*s*.	-	0	0	10
Exceeding 2*l*. 2*s*. and not exceeding 5*l*. 5*s*.	-	0	1	3
Exceeding 5*l*. 5*s*. and not exceeding 10*l*.	-	0	1	9
Exceeding 10*l*. and not exceeding 20*l*.	-	0	2	0
Exceeding 20*l*. and not exceeding 30*l*.	-	0	3	0
Exceeding 30*l*. and not exceeding 50*l*.	-	0	5	0
Exceeding 50*l*. and not exceeding 100*l*.	-	0	8	6

Which said notes may be re-issued, after payment thereof, as often as shall be thought fit.

Promissory note for the payment *in any other manner than to the bearer on demand*, but not exceeding two months after date, or sixty days after sight, of any sum of money.

Amounting to 40*s*. and not exceeding 5*l*. 5*s*.	-	0	1	0
Exceeding 5*l*. 5*s*. and not exceeding 20*l*.	-	0	1	6
Exceeding 20*l*. and not exceeding 30*l*.	-	0	2	0
Exceeding 30*l*. and not exceeding 50*l*.	-	0	2	6
Exceeding 50*l*. and not exceeding 100*l*.	-	0	3	6

These notes are not to be re-issued after being once paid.

Promissory note for the payment, *either to the bearer on demand, or in any other manner than to the*

55 G.3. c.184. *bearer on demand*, but not exceeding two months after date, or sixty days after sight, of any sum of money,

Exceeding 100*l*. and not exceeding 200*l*. -	£0	4	6
Exceeding 200*l*. and not exceeding 300*l*. -	0	5	0
Exceeding 300*l*. and not exceeding 500*l*. -	0	6	0
Exceeding 500*l*. and not exceeding 1000*l*. -	0	8	6
Exceeding 1000*l*. and not exceeding 2000*l*. -	0	12	6
Exceeding 2000*l*. and not exceeding 3000*l*. -	0	15	0
Exceeding 3000*l*. - - - - -	1	5	0

The notes are not to be re-issued after being once paid.

Promissory note for the payment to the bearer or otherwise, at any time exceeding two months after date, or sixty days after sight, of any sum of money,

Amounting to 40*s*. and not exceeding 5*l*. 5*s*. -	0	1	6
Exceeding 5*l*. 5*s*. and not exceeding 20*l*. -	0	2	0
Exceeding 20*l*. and not exceeding 30*l*. -	0	2	6
Exceeding 30*l*. and not exceeding 50*l*. -	0	3	6
Exceeding 50*l*. and not exceeding 100*l*. -	0	4	6
Exceeding 100*l*. and not exceeding 200*l*. -	0	5	0
Exceeding 200*l*. and not exceeding 300*l*. -	0	6	0
Exceeding 300*l*. and not exceeding 500*l*. -	0	8	6
Exceeding 500*l*. and not exceeding 1000*l*. -	0	12	6
Exceeding 1000*l*. and not exceeding 2000*l*. -	0	15	0
Exceeding 2000*l*. and not exceeding 3000*l*. -	1	5	0
Exceeding 3000*l*. - - - - -	1	10	0

These notes are not to be re-issued after being once paid.

Promissory note for the payment of any sum of money by instalments, or for the payment of several sums of money at different days or times, so that the whole of the money to be paid shall be definite and certain - - -	*The same duty as on a promissory note, payable in less than two months after date for a sum equal to the whole amount of the money to be paid.*

And the following instruments shall be deemed and taken to be promissory notes, within the intent and meaning of this schedule; *viz.*

All notes, promising the payment of any sum or sums of money out of any particular fund, which may or may not be available; or upon any condition or contingency, which may or may not be performed or happen; if the same shall be made payable to the bearer, or to order, and if the same shall be definite and certain, and not to amount in the whole to 20*l*.

And all receipts for money deposited in any bank, or in the hands of any banker or bankers, which shall contain any agreement or memorandum, importing that interest shall be paid for the money so deposited.

Exemptions from the duties on promissory notes.

All notes, promising the payment of any sum or sums of money out of any particular fund, which may or may not be available; or

upon any condition or contingency, which may or may not be performed or happen; where the same shall not be made payable to the bearer or to order; and also where the same shall be made payable to the bearer or to order, if the same shall amount to 20l. or be indefinite. 55 G.3. c.184.

And all other instruments, bearing in any degree the form or style of promissory notes, but which in law shall be deemed special agreements, except those hereby expressly directed to be deemed promissory notes.

But such of the notes and instruments here exempted from the duty on promissory notes, shall nevertheless be liable to the duty which may attach thereon, as agreements, or otherwise.

Exemptions from the preceding and all other stamp duties.

All promissory notes for the payment of money, issued by the governor and company of the bank of England.

Protest of any bill of exchange or promissory note for any sum of money,	£.	s.	d.
Not amounting to 20l.	0	2	0
Amounting to 20l. and not amounting to 100l.	0	3	0
Amounting to 100l. and not amounting to 500l.	0	5	0
Amounting to 500l. or upwards	0	10	0

A promissory note for the payment of 30l. at three months after date, with interest from the date, requires a stamp applicable to a note not exceeding 30l.

Pruessing v. *Ing*, *H.* 1 & 2 *G.* 4., 4 *B.* & *A.* 204. Declaration on a promissory note, by which the defendant promised to pay to the plaintiff, three months after the date thereof, 30l. *with lawful interest from the date thereof.* At the trial before *Holroyd* J., at the last *Midd. Sitt.*, it appeared upon the production of the note, that it was written on a stamp applicable to a 30l. note. It was then objected, that inasmuch as the note was given for 30l., with lawful interest *from the date thereof*, it was in effect a security for 30l. and 7s. 6d., three months' interest thereon; and, therefore, within the 55 *G.* 3. *c.* 184. sched. part I., was given for the payment of a sum exceeding 30l., and ought to have had a stamp of 3s. 6d. The learned Judge directed the jury to find a verdict for the plaintiff, with liberty for the defendant to move to enter a nonsuit; and on motion to set it aside, — *Abbott* C. J. The stamp act imposes upon every promissory note for the payment, at any time exceeding two months after date, of any sum of money exceeding 20l., and not exceeding 30l., a duty of 2s. 6d., and other duties upon other notes in proportion to the sums thereby secured. The object of the legislature was to impose a *pro ratâ* stamp duty upon the sum actually due at the time of taking the security, and not upon what might become due in future for the use of the money. The question, therefore, in this case is, what was the sum due at the time when the note was taken? For that is the sum secured. I am quite satisfied that the words "sum of money" in the act, mean the principal sum mentioned in the note, and not a sum compounded of principal and interest. A contrary decision would be most mischievous, and have the effect of avoiding many securities; for it has been the constant practice under similar provisions applicable to bonds in this and former stamp acts, to measure the stamp duty by the principal sum secured, although interest is always made payable from the date of the bond. I think, therefore, that this rule ought to be refused. R. R.

A promissory note, payable two months after sight, requires a stamp appropriated to a note payable more than 60 days after sight, or two months after date, *date* and *sight* not being in this case synonymous.

Sturdy v. *Henderson*, *T.* 2 *G.* 4. 4 *B.* & *A.* 592. Assumpsit upon a promissory note, dated *July* 7th, 1818, for 400*l.* payable two months after sight to *S. B. J.* or order. Plea, general issue. At the trial before *Abbott* C. J. at the last *Guildhall Sittings*, the note, when produced, appeared to be upon a 6*s.* stamp. It was objected, that this was a promissory note for the payment of money at a time *exceeding two months after date, or sixty days after sight*, and that it required a stamp of 8*s.* 6*d.* The learned Judge, being of that opinion directed a nonsuit. And on motion for a rule *nisi* to set this nonsuit aside, *Per Curiam*. This is a note payable more than two months after date; for the two months after sight do not begin to run from the day of the date, but from the day of the note being presented for sight, and that is the practice in bank post bills. This rule must, therefore, be refused. R. R.

55 G. 3 c. 184.

By stat. 55 *G.* 3. *c.* 184. § 3. The new duties are placed under the care of the commissioners for the stamp duties; and by § 8. the powers and provisions of former acts shall be put in execution with regard to these duties.

Issuing bills post-dated, not mentioning the place where drawn, without stamps.

By § 13. If any person shall, after 31 *August*, 1815, make and issue, or cause to be made and issued, any bill, draft, or order for the payment of money, to the bearer on demand, upon any banker or any acting as such, which shall be dated on any day subsequent to the day on which it shall be issued, or which shall not truly specify the place where it shall be issued, or which shall not fall within the exemption contained in the schedule annexed, unless the same shall be duly stamped as a bill of exchange, according to the law in force when the same shall be issued, such person shall forfeit 100*l.*: And if any person shall knowingly take any such bill, draft, or order, in payment of, or as a security for the sum therein mentioned, he shall forfeit 20*l.*: And if any banker or bankers, or any person acting as such, upon whom any such bill, &c. shall be drawn, shall pay or cause to be paid the sum of money therein expressed, or any part thereof, knowing the same to be post-dated, or knowing that the place where it was issued is not duly specified and set forth therein, or knowing that the same does not in any other respect fall within the said exemption, then such banker, &c. shall forfeit 100*l.* for every offence, and moreover shall not be allowed the money so paid, or any part thereof, in account. See Vol. V. title Stamps.

And by § 11. The making, signing, issuing, or causing to be made, signed, or issued, or accepting or paying, or causing or permitting to be accepted or paid, any bill of exchange, draft, or order, or promissory notes for the payment of money liable to any of the duties of this act, without the same being duly stamped, renders those so making, &c. liable to a penalty of 50*l.*

Promissory notes to bearer on demand, not exceeding 100*l.* may be re-issued by the original makers without further duty.

By § 14. After 31 *August* 1815, it shall be lawful for any banker or other person, who shall have made and issued any promissory notes for the payment to the bearer on demand, of any sum of money not exceeding 100*l.* each, duly stamped, to re-issue the same from time to time, after payment thereof, as often as he, or they shall think fit, without being liable to pay any further duty in respect thereof; and that all promissory notes, so to be re-issued, shall be good and valid, and as available in the law, as they were upon the first issuing thereof.

By § 15. No promissory note for the payment to the bearer on demand, of any sum of money not exceeding 100*l.* which shall have been made and issued by any bankers or other persons in partnership; and for which the proper stamp duty shall have been once paid according to the provisions of this act, shall be deemed liable to the payment of any further duty, although the same shall be re-issued by and as the note of some only of the persons who originally made and issued the same, or by and as the note of any one or more of the persons who originally made and issued the same, and any other person or persons in partnership with him or them jointly; nor although such note, if made payable at any other than the place where drawn, shall be re-issued with any alteration therein only of the house or place at which the same shall have been at first made payable.

55 G. 3. c. 184. Such notes not liable to further duty, though re-issued by certain persons not strictly the original makers

§ 16. Enacts, that all promissory notes for the payment to the bearer on demand, of any sum of money, which shall have been actually and *bonâ fide* issued and in circulation, before or upon 31 *Aug.* 1815, duly stamped according to stat. 48 *G.* 3. *c.* 149., and which shall then be re-issuable within the intent and meaning of that act, or of stat. 53 *G.* 3. *c.* 108. for altering, explaining, and amending the said former act, with regard to the duties on re-issuable promissory notes, shall continue to be re-issuable until the expiration of three years from the date thereof respectively, but not afterwards, without payment of any further duty for the same; and if any banker or other person shall at any time after the said 31st *Aug.*, issue or cause to be issued for the first time, any promissory note for the payment of money to the bearer on demand, bearing date before or upon that day, he shall for every such promissory note forfeit 50*l.*

Notes re-issuable under 48 or 53 G. 3. to continue re-issuable till end of three years from the date.

Penalty on frauds, 50*l.*

§ 18. Enacts, that after 31 *Aug.* 1815, it shall not be lawful for any banker or other person, to issue any promissory note for the payment of money to the bearer on demand, liable to any of the duties imposed by this act, with the date printed therein; and if any banker or other person shall issue or cause to be issued any such promissory note with the date printed therein, he or they shall for every promissory note so issued forfeit 50*l.*

Penalty on issuing notes in future with printed dates, 50*l.*

§ 19. Enacts, that all promissory notes hereby allowed to continue re-issuable for a limited period, but not afterwards, shall upon the payment thereof at any time after the expiration of such period, and all promissory notes, bills of exchange, drafts, or orders for money, not hereby allowed to be re-issued, shall, upon any payment thereof, be deemed and taken respectively to be thereupon wholly discharged, vacated, and satisfied, and shall be no longer negotiable or available in any manner whatsoever, but shall be forthwith cancelled by the person or persons paying the same; and if any person shall re-issue or cause or permit to be re-issued any promissory note hereby allowed to be re-issued for a limited period as aforesaid, at any time after the expiration of the term or period allowed for that purpose; or if any person shall re-issue or cause or permit to be re-issued any promissory note, bill of exchange, draft, or order for money, not hereby allowed to be re-issued at any time after the payment thereof; or if any person or persons paying or causing to be paid any such note, bill, draft, or order as aforesaid, shall refuse or neglect to cancel the same, according to the directions of this act, then and

Notes re-issuable for a limited period to be cancelled on payment afterwards; and notes not re-issuable, to be cancelled immediately on payment.

Penalty for re-issuing notes, &c. contrary to law, and for not cancelling them, 50*l.*

55 G.3. c. 184. in either of those cases, the person or persons so offending shall for every such note, bill, draft, or order, as aforesaid, forfeit the sum of 50*l.*; and in case of any such note, bill, draft, or order, being re-issued contrary to the intent and meaning of this act, the person or persons re-issuing the same, or causing or permitting the same to be re-issued, shall also be answerable and accountable to H. M., his heirs and successors, for a further duty in respect of every such note, bill, draft, or order, of such and the same amount as would have been chargeable thereon, in case the same had been then issued for the first time, and so from time to time as often as the same shall be so re-issued; which further duty shall and may be sued for and recovered accordingly, as a debt to H. M., his heirs and successors; and if any person or persons shall receive or take any such note, bill, draft, or order, in payment of or as a security for the sum therein expressed, knowing the same to be re-issued contrary to the intent and meaning of this act, he, she, or they shall, for every such note, bill, draft, or order, forfeit 20*l.*

Penalty for taking notes, &c. re-issued contrary to law, 20*l.*

Notes and bills of the bank of England exempted from stamp duty.

§ 20. Enacts, that all promissory notes and bank post bills, which shall be issued by the governor and company of the bank of *England* after 31 *Aug.* 1815, shall be exempted from all the duties hereby granted; and that it shall be lawful for the said governor and company to re-issue any of their notes after payment thereof, as often as they shall think fit.

Bank of England to pay a composition.

§ 21. Enacts, that the governor and company of the Bank of *England* shall pay as a composition for the duties which would otherwise have been payable for their promissory notes and bank post bills issued within the year, reckoning from the 5th of *April* preceding the delivery of the said account, the sum of three thousand five hundred pounds for every million, and after that rate for half a million, but not for a less sum than half a million, of the said average amount or value of their said notes and bank post bills in circulation.

A new composition to be made when the bank resume cash payments.

§ 22. Upon the said governor and company resuming their payments in cash, a new arrangement for the composition for the stamp duties shall be submitted to parliament.

Re-issuable notes not to be issued by bankers or others, without a licence. Regulation respecting licences.

§ 24. After 10 *Oct.* 1815, it shall not be lawful for any banker or other person (except the governor and company of the bank of *England*) to issue any promissory notes for money payable to the bearer on demand, hereby charged with a duty and allowed to be re-issued as aforesaid, without taking out a licence yearly for that purpose: which licence shall be granted by two or more of the said commissioners of stamps for the time being, or by some persons authorised in that behalf by the said commissioners, or the major part of them, on payment of the duty charged thereon in the schedule hereunto annexed; and a separate and distinct licence shall be taken out, for or in respect of every town or place where any such promissory notes shall be issued by, or by any agent or agents for or on account of, any banker or bankers or other person or persons; and every such licence shall specify the proper name or names and place or places of abode of the person or persons, or the proper name and description of any body corporate, to whom the same shall be granted, and also the name of the town or place where, and the name of the bank, as well as the partnership, or other name, style, or firm under which such notes are to be

issued; and where any such licence shall be granted to persons in partnership, the same shall specify and set forth the names and places of abode of all the persons concerned in the partnership, whether all their names shall appear on the promissory notes to be issued by them, or not; and in default thereof such licence shall be absolutely void; and every such licence which shall be granted between the 10th day of *October* and the 11th day of *November* in any year, shall be dated on the 11th day of *October*; and every such licence, which shall be granted at any other time, shall be dated on the day on which the same shall be granted; and every such licence respectively shall have effect and continue in force from the day of the date thereof until the 10th day of *October* following, both inclusive. 55 G. 3. c. 184.

§ 26. Where any banker or person applying for a licence under this act, would, under the said act of stat. 48 *G.* 3., have been entitled to have two or more towns or places in *England* included in one licence, if this act had not been made, such banker or person shall be entitled to the like privilege under this act. Several towns in England may be included in one licence, in certain cases.

§ 27. The banker or other person applying for any such licence as aforesaid, shall produce and leave with the proper officer, a specimen of the promissory notes proposed to be issued by him or them, to the intent that the licence may be framed accordingly; and if any banker or other person (except the said governor and company of the bank of *England*) shall issue or cause to be issued by any agent, any promissory note for money payable to the bearer on demand, hereby charged with a duty, and allowed to be re-issued as aforesaid, without being licensed so to do in the manner aforesaid, or at any other town or place, or under any other name, style, or firm, than shall be specified in his or their licence, the banker, or other person so offending, shall for every such offence forfeit 100*l.* Persons applying for licences to deliver specimens of their notes. Penalty for issuing notes without licence, 100*l.*

§ 28. Where any such licence as aforesaid shall be granted to any persons in partnership, the same shall continue in force for the issuing of promissory notes duly stamped, under the name, style, or firm therein specified, until the 10th day of *October* inclusive following the date thereof, notwithstanding any alteration in the partnership. Licences to continue in force notwithstanding alteration in partnerships.

§ 29. After the passing of this act, promissory notes for the payment of money to the bearer on demand, made out of *G. B.*, or purporting to be made out of *G. B.*, or purporting to be made by or on the behalf of any person or persons resident out of *G. B.*, shall not be negotiable or be negotiated, or circulated or paid in *G. B.*, whether the same shall be made payable in *G. B.*, or not, unless the same shall have paid such duty, and be stamped in such manner, as the law requires for promissory notes, of the like tenor and value made in *G. B.*; and if any person or persons shall circulate or negociate, or offer in payment, or shall receive or take in payment any such promissory note, or shall demand or receive payment of the whole or any part of the money mentioned in such promissory note, from or on account of the drawer thereof, in *G. B.*, the same not being duly stamped as aforesaid; or if any person or persons in *G. B.* shall pay or cause to be paid the sum of money expressed in any such note, not Promissory notes made out of G. B., not to be negotiable unless stamped. Penalty on circulating such notes, &c. 20*l.* for each.

55 G. 3. c. 184. being duly stamped as aforesaid, or any part thereof, either as drawer thereof, or in pursuance of any nomination or appointment for that purpose therein contained, the person or persons so offending shall for every such promissory note forfeit the sum of 20*l.*: Provided always, that this clause shall not extend to promissory notes made and payable only in *Ireland*.

31 G. 3. c. 25. Penalty on writing, &c. unstampe bills, &c. By stat. 31 *G.* 3. *c.* 25. § 10. If any person shall write or sign, or accept or pay, or cause the same to be done, any such bill, note, draft, or order, liable to any of the duties aforesaid, without being first duly stamped as aforesaid, he shall forfeit 20*l.*

Penalties how to be recovered and applied. § 24, 25. All penalties by this act incurred may be sued for in the courts at *Westminster;* or any neighbouring justice may hear and determine any offence which subjects the offender to any *pecuniary* penalty; who may, on complaint made within three calendar months, summon the party accused and the witnesses, and examine into the matter of fact; and on confession, or the oath of one witness, may give judgment therein, and levy such penalty by distress on the goods of the offender, which, if not redeemed within six days, may be sold; and such penalty shall be distributed, half to the king and half to the informer; and for want of sufficient distress, the offender shall be committed to prison for three calendar months, unless such penalty be sooner paid.

Appeal. § 25. If any person shall find himself aggrieved by the judgment of such justice, he may, upon giving security to the amount of such penalty and costs, appeal to the next sessions which shall happen after fourteen days next after such conviction, and shall give reasonable notice; and in case such judgment be affirmed, they may award the person appealing to pay such costs occasioned by such appeal as to them shall seem meet.

Mitigation. § 26. Such justice may, where he shall see cause, mitigate any such penalty, so as not to reduce the same to less than one moiety thereof, over and above the costs.

Witnesses. § 27. Witnesses not appearing, having been duly summoned, without reasonable cause, to be allowed by such justice, or refusing to give evidence, shall forfeit 40*s.*, to be recovered in like manner.

Counterfeiting stamps. § 29. Persons counterfeiting or forging any stamp hereby directed to be made use of, shall be guilty of felony without benefit of clergy.

43 G. 3. c. 139. Persons forging, &c. foreign bills of exchange, &c. or tendering the same in payment, guilty of felony, and liable to be transported. By stat. 43 *G.* 3. *c.* 139. § 1. If any person within any part of the U. K. of *G. B.* and *Ireland*, falsely make, forge, or counterfeit, or cause or procure to be falsely made, &c., or knowingly aid or assist in the false making, &c. any bill of exchange, or any promissory note, undertaking, or order for the payment of money, purporting to be the bill of exchange, &c. of any foreign prince, state, or country whatsoever, or of any minister or officer employed in the service of any foreign prince, &c., or of any person, or company of persons, resident in any foreign state or country, or of any body corporate and politic, or body in the nature of a body corporate and politic, constituted by any foreign prince or state, with intent to deceive or defraud H. M., his heirs and successors, or any such foreign prince, state, or country, or any person or company of persons whomsoever, or any body corporate and politic, or body in the nature of a body corporate and politic

whatsoever, whether the same be respectively resident, carrying on business, constituted or being in any part of the U. K., or in any foreign state or country; and whether such bill, note, or order be in *English* or in any foreign language, or partly in one and partly in the other; or if any person shall, within any part of the said U. K. tender in payment or exchange, or otherwise utter or publish as true, any such false, forged, or counterfeited bill, &c., knowing the same to be false, forged, or counterfeited, with intent to deceive or defraud H. M., &c., or any foreign prince, state, or country, or any person or company of persons, or any body corporate and politic, or body in the nature of a body politic and corporate as aforesaid, then every such offender shall be deemed guilty of felony, and on conviction shall be transported not exceeding 14 years. 43 G. 3. c. 139.

§ 2. No person shall, within the U. K., engrave, cut, etch, scrape, or by any other means make, or knowingly aid in the engraving, &c., or by any other means making in or upon any plate, any bill of exchange, or any promissory note or undertaking, or order for the payment of money, purporting to be the bill, &c. of any foreign prince, state, or country, or of any minister or officer employed in the service of any such prince, &c., or of any person or company of persons resident in any foreign state or country, or of any body corporate and politic, or body in the nature of a body corporate and politic, or constituted by any foreign prince or state, or any part of any such bill, &c., without an authority in writing for that purpose from such foreign prince, &c., or from some person duly authorised to give such authority, or shall, within any part of the said U. K. without such authority as aforesaid, by means of any such plate, or by any other device or means, make or print any such foreign bill, &c. or any part thereof, or knowingly, wilfully, and without lawful excuse (the proof thereof shall lie upon the party accused), have in their custody any such plate or device, or any impression taken from the same; and if any person shall offend in any of the cases aforesaid, he shall be deemed guilty of a misdemeanor and breach of the peace, and being thereof convicted, shall be liable, for the first offence, to be imprisoned for (not exceeding) six months, or to be fined, or to be publicly or privately whipped, or to suffer one or more of the said punishments; and for the second offence, to be transported to any of H. M.'s colonies for the term of 14 years: Provided, that nothing herein shall extend in any manner whatsoever to repeal or alter any law now in force for the prevention or punishment of the crime of forgery in any respect whatsoever, within any part of the said U. K. See title Forgery, Vol. II.

Persons engraving plates for foreign bills, &c. or printing them, without lawful authority, guilty of a misdemeanor.

Act not to alter any law in force against forgery.

§ 4. And no person against whom any bill of indictment shall be found at any assizes or sessions, for any offence against this act shall be entitled to traverse the same to any subsequent assizes or sessions, but the court at which such bill of indictment shall be found shall forthwith proceed to try the party against whom the same shall be found, unless they shew good cause, to be allowed by the court, why their trial should be postponed.

Persons against whom any bill of indictment is found not allowed to traverse the same to a subsequent assizes.

§ 5. And if any person shall be convicted of any offence against this act, and shall afterwards be guilty of the like offence in any other county or place, the clerk of the assize, clerk of the peace,

Certificates of former convictions to be produced in cases

43 G. 3. c. 139. or town clerk, for the county, &c. or place where such former conviction shall have been had, shall, at the request of the prosecutor, or any other on H. M.'s behalf, certify the same by a transcript in few words, containing the effect and tenor of such conviction, for which certificate 2*s.* 6*d.* and no more shall be paid; and such certificate being produced in court, and the hand-writing of such clerk of assize, or of the peace, or town clerk, thereto being proved, shall be evidence of such former conviction.

where persons are tried for second offences.

Limitation of actions. § 9. Limits action or suit for any thing done in pursuance hereof to be commenced within three calendar months; and if upon the trial a verdict shall pass for the defendant, or the plaintiff become nonsuit, or discontinue, or upon demurrer judgment be given against the plaintiff, the defendant shall recover treble costs, and have the like remedy for the same as any defendant hath for costs of suit in other cases by law.

Treble costs.

50 G. 3. c. 35. Stat. 50 *G.* 3. *c.* 35. § 13. relates to spoiled stamps; but as justices of peace have no jurisdiction in such matters, the act is not here inserted.

53 G. 3. c. 108. By stat. 53 *G.* 3. *c.* 108. Certain provisions are further made respecting the re-issuing of promissory notes for 100*l.* or less:—And § 3. contains provisions to prevent the re-issuing of notes not exceeding 2*l.* 2*s.* after three years from their date; and enacts that upon payment thereof at any time after such three years, they shall be no longer negotiable, but be cancelled by the person paying them; and for re-issuing at such period, or refusal or neglect so to cancel, the person so offending shall forfeit 50*l.*, and receiving or taking any such note in payment of, or as a security for the sum therein expressed, incurs a penalty of 20*l.* to be recovered according to the stamp laws. Sections 4 to 10, contain regulations as to the amount of stamps in some particular cases not before provided for.

See Stamps, Vol. V.

Prophecies.

[33 H. 8. c. 14.—1 Ed. 6. c. 12.—3 & 4 Ed. 6. c. 15.—5 El. c. 15.]

5 Eliz. c. 15. BY stat 5 *Eliz. c.* 15. If any person shall advisedly and directly advance, publish, and set forth by writing, printing, signing, or any other open speech or deed, any fond, fantastical, or false prophecy, upon or by the occasion of any arms, fields, beasts, badges, or such other like things accustomed in arms, cognisances, or signets, or upon or by reason of any time, year, or day, name, bloodshed, or war, to the intent thereby to make any rebellion, insurrection, dissension, loss of life, or other disturbance in the realm; and shall be convicted thereof before a judge of assize, or justice of the peace, within six months after the offence committed, he shall for the first offence be imprisoned for a year, and forfeit

10*l.*; and for the second offence shall be imprisoned for life, and forfeit his goods: half the forfeitures to the king, and half to him who shall sue for them in any court of record. 5 Eliz. c. 15.

The intent of the act was, to abolish certain foolish and superstitious notions which prevailed in the times of ignorance, as were set forth in a statute made in the 33 *H.* 8. *c.* 14. reciting—Where divers and sundry persons, making their foundation by prophecies, have taken upon them a knowledge (as it were) what shall become of them which bear in their arms, cognisance, or badge,—fields, beasts, fowls, or any other thing which hath been used or accustomed to be put in any of the same, or in and upon the letters of their names, have devised, descanted, and practised to make folk think, that by their untrue guesses, it might be known what good or evil things should come, happen, or be done, by or to such persons as bore or had such badges or cognisances, or had such letters in their names, to the great terror and destruction of such noble personages, of whom such false prophecies have or should hereafter be set forth, whereby in times past many noblemen have suffered, and (if their prince would give any ear thereto) might hap to do hereafter; And therefore enacted that he who should do so, should be guilty of felony without benefit of clergy. 33 H. 8. c. 14.

This statute was repealed in the lump by the 1 *Ed.* 6. *c.* 12., which repealed all statutes making any offences felony from the first year of the reign of king *Henry* the eighth. And the substance thereof was re-enacted, with a mitigation of the penalty, by stat. 3 & 4 *Ed.* 6. *c.* 15. Which statute expiring, the 5 *El. c.* 15. was enacted as above. 1 Ed. 6. c. 12. 3 & 4 Ed. 6. c. 15.

Protestant Dissenters. See Dissenters, Vol. I.

Public Worship.

[50 Ed. 3. c. 5.—1 R. 2. c. 15.—1 Ed. 6. c. 1.—1 Mar. sess. 2. c. 3.—1 J. 1. c. 4.—13 & 14 C. 2. c. 4.—1 W. & M. sess. 1. c. 18.—22 G. 2. c. 33. art. 1.]

IMPUGNERS of the book of common prayer, of the 39 articles, of the rites and ceremonies of the church of *England*, of the episcopal government of the church, or of the form of ordering and consecrating archbishops and bishops, shall be *ipso facto* excommunicated and not restored but upon repentance, and public recantation. *Can.* 4, 5, 6, 7, 8. Impugners of the rites of the church.

By stat. 1 *Ed.* 6. *c.* 1. If any person shall speak irreverently of the sacrament of the Lord's supper, he shall suffer imprisonment, and make fine and ransom at the king's will. And three justices (1 *Q.*) may take information by the oaths of two witnesses; and afterwards, at the sessions, may enquire thereof by the oath of 12 men upon indictment. And they shall, at the sessions where the offender shall be indicted, direct a writ to the bishop to appear by 1 Ed. 6. c. 1. Speaking irreverently of the sacrament.

himself or deputy at the trial. But no person shall be molested, but within three months after the offence committed.

22 G. 2. c. 33. Public worship in the navy.

All commanders, captains, and officers at sea, shall cause the public worship of Almighty God, according to the liturgy of the church of *England*, to be performed in their respective ships; and prayers and preachings by the chaplains shall be performed diligently. Stat. 22 *G.* 2. *c.* 33. art. 1.

13 & 14 C. 2. c. 4. Qualifications of lecturer.

By stat. 13 & 14 *C.* 2. *c.* 4. § 19, 20, 21. No person shall be received as a lecturer, or allowed to preach or read any lecture or sermon, without licence from the bishop, and assenting to the 39 articles, and reading the common prayer, before his first sermon, and on the first lecture day of every month; on pain of three months' imprisonment, for every offence, by two justices of the peace, on certificate from the bishop of the offence committed.

1 Mar. sess. 2. c. 3. Disturbers of public worship.

By stat. 1 *Mar. sess.* 2. *c.* 3. If any person shall disturb *a preacher in his sermon* by word or deed, he shall be apprehended and carried before a justice of the peace, who shall commit him to safe custody, and within six days he and another justice shall examine the fact, and if they find him guilty by two witnesses, or confession, they shall commit him to gaol for three months, and further to the next sessions; and if at the sessions he repents and is reconciled, he shall be discharged on finding sureties for his good behaviour for a year; if not, he shall be continued in gaol till he does; saving the ecclesiastical jurisdiction; and he shall not be punished both ways.

This statute, though made in queen *Mary's* reign, extendeth to the divine service now established. *Gibs.* 372.

Reading notices in church.

Williams v. *Glenister*, *E.* 5 *G.* 4. 2 *B.* & *C.* 699. Trespass for assault and false imprisonment. A parish clerk refused to read in church a notice which was presented to him for that purpose, and the person presenting it read it himself at a time when no part of the church service was actually going on, *viz.* whilst the minister was walking from the communion table to the vestry room. The defendant, a constable, by order of the minister, took him out of the church and detained him an hour after the service was over. He then allowed plaintiff to go, on his promise to attend a magistrate the next day, which he accordingly did, but no complaint being made against him was discharged. Verdict for Plaintiff. On motion for R. N. the *Rubric* and stats. 1 *M. sess.* 2. *c.* 3. § 3. 1 *W.* & *M.* *c.* 18. § 18. were cited. — Per *Abbott* C. J. It appears to me, that the 1 *M. sess.* 2. *c.* 3. merely gave to the common law cognizance of an offence which was before punishable by the ecclesiastical law; in order to be within that statute, the party must maliciously, wilfully, or of purpose molest the person celebrating divine service. Had the notice been read by the plaintiff whilst any part of the service was actually going on, we might have thought that he had done it on purpose to molest the minister; but the act having been done during an interval when no part of the service was in the course of being performed, and the party apparently supposing that he had a right to give such a notice, I am not prepared to say that the 1 *M. sess.* 2. *c.* 3. warranted his detention, in order that he might be taken before a justice of peace. Neither does the case come within the toleration act, 1 *W.* & *M.* c. 18. That

only applies where the thing is done wilfully, and of purpose maliciously to disturb the congregation or misuse the preacher. The detention of the plaintiff after the time when the service ended, was therefore illegal, and we ought not to disturb the verdict which has been found. R. R.

By stat. 1 *W.* & *M. sess.* 1. *c.*18. § 18. "If any person or persons, at any time or times after the 10th day of *June* (1688) do and shall willingly and of purpose, maliciously or contemptuously come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet and disturb the same, or misuse any preacher or teacher, such person or persons, upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognisance in the penal sum of 50*l.*, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of 20*l.* to the use of the king's and queen's majesties, their heirs and successors." See also tit. Riot, Vol. V. Disturbers of religious worship, how punished.

The court of K. B. refused to grant a *certiorari*, to remove an indictment at the sessions, for a person not behaving himself modestly and reverently at the church during divine service; which although punishable by ecclesiastical censures, yet the court conceived it a proper cause within cognisance of the justices of the peace. And this was before the above-mentioned statute of the 1 *W.* &. *M. c.*18. — 1 *Keb.* 491. — But in *R.* v. *Hube and others*, 5 *T. R.* 542. it was held that an indictment upon stat. 1 *W.* & *M. c.* 18. at the quarter sessions may before verdict be removed by *certiorari* into the *K. B.*, and upon conviction of several defendants, each is liable to the penalty of 20*l.* See 3 *Burn's Eccl. Law*, 8th ed. by *Tyrwhitt*, tit. Public Worship, § 111.

By stat. 50 *Ed.*3. *c.*5. 1 *R.*2. *c.*15. No clergyman shall be arrested in any church or church-yard whilst he attends to divine service; on pain of imprisonment of the offender and ransom at the king's will, and satisfaction to the party arrested. 50 Ed. 3. c. 5. 1 R. 2 c. 15. Arresting a clergyman attending divine service.

But the arrest notwithstanding, if not on a *Sunday*, is good in law. *Watson*, c. 34.

And see titles Dissenters, Vol. I. and Popery, *ante*.

Purveyors.

[12 C. 2. c. 24.]

ANCIENTLY the king's court was supplied with necessaries from the ancient demesnes of the crown; and in respect thereof, the tenants of those lands had many privileges, which they still enjoy: But this method being found to be troublesome and inconvenient was by degrees disused; and afterwards the king was wont to appoint certain officers to buy in provisions for his household, who were called purveyors, and claimed many pri- Abuses of purveyors.

vileges by the prerogative of the crown. 2 *Inst.* 542. 1 *Haw.* *c.*47. § 1.

Purveyance taken away.

The several laws which restrained the exorbitance of these purveyors, make up a pretty large title in the old books; but these laws proving ineffectual to remedy the evil complained of,

12 C.2. c.24.

at length by stat. 12 *C.*2. *c.*24. purveyance was entirely taken away; by which it is enacted that no sum of money, or other thing shall be taken for any provision, carriages, or purveyances for the king.

And that no person under colour of purveyance shall take any timber, fuel, cattle, corn, grain, malt, hay, straw, victual, cart, carriage, or other thing, without consent of the owner; nor shall require any to furnish any horses, oxen, or other cattle, carts, ploughs, wains, or other carriages, for the use of the king or his household, without the owner's consent.

On pain of being committed to gaol by a justice of the peace, and the constable, until the next sessions, to be there indicted; and also of paying to the party treble damages and treble costs on an action at law.

ADDENDA.

Justices.

[*Vide ante*, p. 172.]

SO even where notice of trial has been given, *Nestor* v. *Newcome*, and another, *T.* 5 *G.* 4. 3 *B.* & *C.* 159.

In an action against a magistrate for false imprisonment, the plaintiff proved a commitment for a certain alleged offence. The defendant proved a conviction of the plaintiff for an offence differing from that recited in the commitment: Held, that this conviction was no justification of the imprisonment.

The defendant, in order to deprive the plaintiff of his costs under the 43 G. 3. c. 141. tendered evidence to shew that the offence mentioned in the conviction had actually been committed by the plaintiff: it was held, however, that that statute applied only

Rogers v. *Jones*, *M.* 5 *G.* 4., 3 *B.* & *C.* 409. Trespass for false imprisonment. Defendant, a justice of peace. At the trial before *Park* J., at *Herefordshire Summer Assizes*, 1824, the plaintiff proved a commitment by the defendant, reciting, that a certain quantity of wood, the property of *T. D.*, had been cut and spoiled, and taken and carried away, and that he had just cause to suspect that the plaintiff did cut, &c., and carry away the same, and that two ashen trees stolen were found on the plaintiff's premises, and that he could not give any satisfactory account how he came by the same; and therefore, that he, defendant, convicted plaintiff of cutting, spoiling, taking, and carrying away wood, the property of *T. D.*; and the defendant ordered the plaintiff, within the space of twenty-five days then next ensuing, to pay to *T. D.* 11*s.*, in satisfaction of the damage done, and also ordered the plaintiff, within the same space of twenty-five days, to pay to the overseers of the parish, for the use of the poor, 20*l.* for the said offence, and plaintiff was committed for disobeying this order. On the part of the defendant a conviction was produced, by which it appeared that the plaintiff was convicted, under stat. 6 *G.* 3. *c.* 48., for that he, on, &c., did go into the wood grounds belonging to *T. D.*, of, &c., and did cut, spoil, take, and feloniously carry away two ash trees of the said *T. D.*, not having the consent of the said *T. D.*, the owner of the said woods, nor of any other person entrusted with the care thereof, for which offences the plaintiff was ordered to pay the sum of 20*l.*, together with the sum of 3*l.* 0*s.* 6*d.*, for the charges and expences attending the said conviction, this being his first offence; and it was contended, that as this conviction was good upon the face of it, it was evidence of all the facts stated in it, and a justification of the imprisonment; but the learned judge was of opinion that the commitment not being founded on the same statute was not justified by the conviction. Evidence was then tendered to shew that the plaintiff had been guilty of the

Rogers v. Jones.

to cases where convictions had been quashed, and, therefore, that the evidence was not admissible for that purpose. Quære, whether it was admissible in mitigation of damages.

offence imputed to him; but the learned judge thought it inadmissible, and the plaintiff obtained a verdict for 23*l*.——Argument on motion for a new trial. It is a general rule, that in trespass against a magistrate, a subsisting conviction, good upon the face of it, for an offence within his jurisdiction, being produced on the trial, is sufficient evidence of the facts stated in it, and a bar to the action; *Strickland* v. *Ward*, 7 *T. R.* 633. *Massey* v. *Johnson*, 12 *East*, 67. *Brittain* v. *Kinnaird*, 1 *Brod. & Bing.* 432., and *Gray* v. *Cookson*, 16 *East*, 13. Now here, the conviction produced is of an offence on stat. 6 *G.* 3. *c.* 48. It is, therefore, evidence that the defendant was guilty of the offence charged in it, and that it was a matter within the jurisdiction of the convicting magistrate. It is true, that the plaintiff shewed a commitment by the defendant under an old statute, stating an offence not founded on the 6 *G.* 3., but a magistrate may draw up his conviction after the party has been committed; *Gray* v. *Cookson*, 16 *East*, 13. Secondly, the learned judge ought to have received evidence to shew that the defendant actually committed the offence charged in the conviction, because, by stat. 43 *G.* 3. *c.* 141. it is enacted, that in all actions brought against any justice, for or on account of any conviction made by him, under any act of parliament, or for any act done or commanded by him for the levying any penalty, apprehending any party, or about carrying such conviction into effect, in case such conviction shall have been quashed, the plaintiff, besides the value of the penalty which may have been levied, shall not recover any more damages than 2*d*., nor any costs of suit, unless it shall be expressly alleged in the declaration in such action, which shall be an action on the case only, that such acts were done maliciously and without any reasonable or probable cause; and by *s.* 2. of the same statute the plaintiff shall not recover back the penalty levied, nor any damages or costs, if the justice proves at the trial that the plaintiff was guilty of the offence. The learned judge was of opinion that the statute applied to those cases only where the conviction had been quashed; but that construction is liable to this inconsistency, that it would put a magistrate in a better situation when his conviction has been quashed than when a valid conviction exists, which would be absurd and unjust. The statute is in the alternative. The words "in case such conviction shall be quashed," apply only to the latter part of the sentence, to acts done for or about the carrying of the conviction into effect, and not to the former words, "for any act done or commanded by the justice for the levying any penalty, apprehending any party," &c. Besides, at all events, the evidence ought to have been received in mitigation of damages.——*Per Cur.* The commitment and conviction do not connect themselves together. A magistrate cannot justify a commitment for one offence by a conviction for another and different offence. Here, the plaintiff has been imprisoned under a commitment for disobedience to an order of a magistrate, by which he was directed to pay 11*s*., as a recompence to the owner of the wood taken, and 20*l*. to the overseers of the poor of the parish. It is difficult to say that that order and commitment are founded on any statute. It would appear that the magistrate intended to proceed on stat. 15 *Car.* 2. *c.* 2., but the punishment is not warranted. The conviction upon which the

magistrate relies, as a justification for this imprisonment, is founded on stat. 6 *G.* 3. *c.* 48., by which it is made an offence, wrongfully and maliciously to cut down trees without the consent of the owner. That conviction would have been an answer to an action for a commitment in respect of the offence mentioned in it; but it is no justification of imprisonment for any other offence. As to the other point, it was held by this court, in *Gray* v. *Cookson*, 16 *East*, 13. 21. (*ante*, p. 175.), that stat. 43 *G.* 3. *c.* 141. applied only to cases where the conviction had been quashed. If the argument urged to-day were to prevail, a magistrate might convict on insufficient evidence, and afterwards be permitted to shew that sufficient evidence might have been adduced to justify the conviction. The only other point is, whether this evidence ought not to have been admitted in mitigation of damages. Now even supposing it to have been admissible, as the commitment was illegal, and the jury have only given the plaintiff a verdict for 23*l.*, which was the sum that he must have paid in order to relieve himself from that illegal imprisonment, we cannot say that under such circumstances a less sum ought to have been given. *R. R.*

Rogers v. Jones.

Lord's Day.

[*Vide ante*, p. 305. *stat.* 3 *C.* 1. *c.* 1.]

REX v. *Middleton*, *T.* 5 *G.* 4. 3 *B.* & *C.* 164. Motion for a *certiorari* to remove a conviction before the justices of the borough of *Stamford*, in *Lincolnshire*, under stat. 3 *C.* 1. *c.* 1. Defendant was the driver of a *van* travelling to and from *London* and *York*, and was stopped in *Stamford* whilst on his journey, and convicted as a carrier travelling with horses on a *Sunday*. *D. F. Jones* contended that this penal statute ought not to be extended beyond its express terms, but should be confined to the mere local pursuit of ordinary occupations, instead of being made to prevent communications between distant places for the public benefit; or at least that it should be confined to such conveyances as were in use at the time of the passing of the act; otherwise, not only every stage coach, but also every mail-coach, which carried a parcel, or even a passenger, upon a *Sunday*, might be stopped, and the driver subjected to a penalty at every place through which he passed. *Per Curiam.* We decline, at present, saying any thing upon the inconvenience suggested as to either stage or mail coaches, but we are clearly of opinion, that a person who has the care of a van is a carrier within the terms of this act of parliament, which ought to receive a liberal construction, being for the better observance of the Lord's day. R. R.

The driver of a van travelling to and from London and York, is a carrier within the meaning of the 3 Car. 1. c. 1. and liable to be convicted in the penalty of 20*s.* for travelling on the Lord's day.

Lunatics.

[*Vide ante*, p. 339. *form* (A).]

Information of an overseer of the poor in order to obtain the Warrant of two Justices to authorise the seizing and selling of so much of the goods and chattels, and to receive so much of the annual rents of the lands and tenements of a Lunatic, as shall be necessary to repay the expences, &c.

County of } *THE information and complaint of* O. P. *overseer*
——— } *of the poor of the parish of* ———, *in the county of* Westmorland, *exhibited and made on oath before us* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, this* ——— *day of* ———, *in the year of our Lord one thousand, eight hundred and* ———.

Who says that, by a warrant under the hands and seals of J. P. *and* K. P., *esquires, two of his majesty's justices of the peace for the county aforesaid,* A. L. *of* ———, *in the said county, being a person so far disorderd in his senses, that he was and is dangerous to be permitted to go abroad; that he the said* A. L. *was, and is* [according to the directions of the said warrant] *safely confined in the house of* A. K. *at* ———, *in the said county, the said house being a secure and proper place for that purpose; and that he the said overseer of the poor has reasonably expended the sum of* ——— *in maintaining and securing the said* A. L., *and therefore he prays the warrant of us the two justices first before mentioned, to seize and sell so much of the goods and chattels, and to receive so much of the annual rents of the lands and tenements of him the said* A. L. *within the said parish of* ———, *as shall be necessary to pay the same.*

Before us, O. P.
J. P.
K. P.

END OF THE THIRD VOLUME.

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